S. Hrg. 98-898

COMPUTER MATCHING: TAXPAYER RECORDS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

JUNE 6, 1984

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
36-576 O WASHINGTON : 1984

S401-46

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COMPUTER MATCHING: TAXPAYER RECORDS

WEDNESDAY, JUNE 6, 1984

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met, at 9:30 a.m., in room SD–342, Dirksen Senate Office Building, Hon. William S. Cohen (chairman of the subcommittee) presiding.

Present: Senator Cohen.

Staff present: Susan M. Collins, staff director; Mary Berry Gerwin, counsel; Frances C. de Vergie, chief clerk; Rachel D. Harlan, assistant chief clerk; Linda J. Gustitus, minority staff director; and Claudette V. Humphreys, minority counsel.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. The committee will come to order.

Today, more than ever before in our Nation's history, we are living in an information society, in which few individuals can escape having statistics about them stored in files. The information contained in these files range from the general to the very personal, from name, address, and social security number to information about a person's income, family, or medical history.

In order to perform the functions of everyday life, such as attending school, obtaining credit or insurance, receiving Government benefits or paying taxes, each individual must submit some portion of his or her personal information to a vast array of recordkeeping organizations.

The technological capacity of computers and the wide availability of the computers, both within and outside government, have made this information gathering faster and more efficient. Computers have also blurred the lines of these recordkeeping organizations. By being able to talk to each other, computers are able to crossmatch information contained in separate files and create new, more extensive data bases.

Such information practices can significantly affect the privacy rights of individual citizens. While no one would argue that citizens should be able to prevent all information from being collected, today the individual can too easily lose control over the transfer of personal information. A recent Lou Harris poll indicated that a majority of Americans believe that this is true. Sixty-seven percent of those surveyed indicate that they believe that personal information about themselves is being kept in files somewhere for purposes not known to them.

It is important to note that among the general public, this belief has increased by 23 percent just in the last decade.

It's crucial that the Federal Government monitor how well its information policy is keeping pace with our new technological capacity. Congress must vigilantly exercise its oversight responsibilities to determine whether the Federal Government is striking the proper balance between the important concerns of governmental efficiency and individual privacy.

Over the past 2 years, this subcommittee has examined some of the issues raised by the widespread transfer of data to and from Government. The subcommittee has held hearings on the use of computer matching by Government agencies to detect fraud and abuse in Government programs. At those hearings, the subcommittee examined the implications of computer matching on the privacy rights of individuals. Last October the subcommittee held 2 days of hearings on the adequacy of computer security in the Federal Government and the private sector and examined what steps can be taken to better protect personal and business data from abuse.

Today the subcommittee is going to examine the use of a special class of records held by the Government that affects the greatest number of American citizens: tax records. In passing the Tax Reform Act of 1976, the Congress established the general principle that tax records should be kept confidential. Due to evidence of possible abuses of tax records in the early 1970's, the Congress placed stringent restrictions on the disclosure of tax information outside the Internal Revenue Service. Since that time, the Congress has authorized the IRS to share certain types of tax information with other Government agencies for specific purposes.

The IRS is now allowed, for example, to disclose to the Department of Education the names and addresses of taxpayers who have defaulted on student loans and to disclose taxpayer identities to the National Institute for Occupational Safety and Health to locate persons who may have been exposed to occupational health hazards. The IRS is also authorized to engage in a number of nontax activities, such as offsetting the tax refunds of persons who are delinquent in making child support payments and forwarding letters on behalf of other Government agencies.

The Omnibus Deficit Reduction Act of 1984, recently passed by the Senate and now pending in conference, requires the IRS to provide information on the earned income of taxpayers to Federal and State government agencies which administer the Food Stamp, AFDC, SSI, and medicaid programs. These agencies would use the tax information to check the eligibility of recipients and applicants for benefits under these programs. The computer matches authorized by this bill could involve the records of thousands of citizens. It is one of the largest computer matches ever permitted by the Congress.

Undoubtedly, many of these uses of tax information are worthy ones. Serious concerns are, however, raised each time the Congress authorizes yet another disclosure of tax information. Do such disclosures have an adverse effect on voluntary compliance with our tax laws? Do the disclosures abridge an individual's right to confidentiality of his or her tax information? How do agencies receiving information from the IRS handle and protect this sensitive data? Is there sufficient oversight of computer matching of IRS records? Are adequate procedures in place to protect the rights of individuals whose records are matched?

Today the subcommittee hopes to explore some of these issues. In addition to the transfer of data from the IRS, this hearing will also explore the collection of data by the IRS. The IRS, for example, has recently purchased commercial mailing lists to identify nonfilers of income tax returns. This project has raised questions on what type of information about private citizens the Federal Government should be allowed to collect. For the Government to use technology to enhance its efficiency, I think everyone agrees, is sound business practice. But our desire for efficiency and our fascination with technology should not obscure the very real threat that the massive transfer of sensitive data poses for the individual's right of privacy.

So it is with this essential conflict in mind that these hearings have been scheduled. How can we encourage maximum governmental efficiency and at the same time protect the privacy rights of individual citizens? This Orwellian year of 1984—which is, I might add, also the 10th anniversary of the Privacy Act of 1974—is an appropriate time for the Congress to reassess whether the proper balance of these two important concerns has been struck.

This morning a number of witnesses will assist the subcommittee in exploring the issues. First we will hear from Roscoe Egger, the Commissioner of the IRS. We will also hear from former IRS Commissioner Donald C. Alexander, the American Civil Liberties Union, the National Senior Citizens Law Center, and the Direct Marketing Association, a coalition of direct marketing companies.

I look forward to the testimony this morning, and I expect it is going to assist us in evaluating the benefits and the issues raised by computer matching of tax records.

Today, as our first witness, the Honorable Roscoe Egger, Jr., Commissioner of the Internal Revenue Service.

Mr. Egger, if you would summarize your testimony, it would be very helpful. It will be included in full in the record, but proceed as you see fit.

TESTIMONY OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY WALTER E. BERGMAN, DEPUTY ASSISTANT COMMISSIONER FOR PLANNING, FINANCE AND RESEARCH; AND ARNOLD B. GORDON, ACTING DIRECTOR, DISCLOSURE AND SECURITY DIVISION

Mr. **Egger**. I will attempt, Mr. Chairman, to summarize and will submit the entire statement for the record.

I am pleased to be here to discuss with you and the subcommittee the safeguards and the procedures which are applicable to the transfer of information between the Internal Revenue Service and other governmental agencies. I'll also talk about the Service's use of information that is obtained from public sources, such as real estate records and commercial lists. Detailed background information on these issues to be covered has already been supplied to the subcommittee staff.

With me here today are Walter Bergman, Deputy Assistant Commissioner of Planning, Finance and Research, and Arnold Gordon, Acting Director of the Disclosure and Security Division. These gentlemen will be available to assist in answering questions on any issues that are raised.

Today's hearing focuses on how the Service collects, manages and protects information. As the agency charged with the administration of the Nation's tax laws, we are primarily in the information business. Boiled down to its basics, American-style tax administration involves taxpayers voluntarily providing information to the IRS on their tax returns. To a large degree, the information which we get from taxpayers is examined in light of other information that we receive from employers, other payors, audits and other sources.

Certainly among Government agencies, and probably in the private sector as well, the Service is in the forefront of the revolution in information management. The Service currently employs state-of-the-art technology in its efforts to keep costs low and efficiency high. We succeeded in processing well over 171 million tax returns last year and in keeping track of millions of collection and examination proceedings through this technology.

But despite all our successes, we recognize that the intelligent use of tax information gathered from taxpayers and third parties involves a matter of balance: efficient tax administration on the one hand, and the individual's right to privacy on the other. As a part of the Tax Reform Act of 1976, the Congress carefully considered this balance, and as a result revised drastically, Internal Revenue Code section 6103. Although this statute is frequently referred to as the tax law's "disclosure statute," it is in reality a nondisclosure statute that generally prohibits the release of taxpayer information.

As I will discuss later on, we do make disclosures to a number of entities for a variety of purposes. However, each of these situations is carefully limited and specifically authorized by section 6103.

Currently, the effectiveness of our tax system rests on voluntary self-assessment. When we do gather information from other sources, the essential ingredient in the administration of the tax laws is the information provided on taxpayers' returns. Without the cooperation of the vast majority of taxpayers, the system would simply collapse. Consequently, we are extremely sensitive to any change that might endanger levels of voluntary compliance.

In order to enforce the tax laws, the Service does ask taxpayers for a great deal of information, and much of this information is often considered to be of a sensitive or confidential nature. Because we feel that taxpayers will be more willing to provide the tax information if they know that IRS handles it on a confidential basis, we are extremely concerned about issues of confidentiality, and as a result, carefully guard against improper disclosure.

To help us get a better understanding of how the public perceives the issue of confidentiality, the Roper organization in February of this year completed a survey on the public's perception on the confidentiality of tax return information. The results of this survey are somewhat mixed. For example, while 14 percent of the respondents felt the IRS released information freely, 31 percent agreed that the Service keeps the information confidential. Unfortunately, well over half of the respondents felt that other Government agencies could get tax information without much difficulty.

Overall, Mr. Chairman, I think the one message in these survey results that we might all agree on, is that our efforts to wisely manage and safeguard tax information are not adequately communicated to the public. We plan to do all we can to improve our own record in this area.

As I mentioned, the Service collects information from a variety of sources. One source that I understand is of interest to the subcommittee is commercial lists. Commercial lists can reflect a variety of information, but typically, they would show such things as names of the heads of households and estimates of household incomes. Private companies prepare these lists using publicly available records such as telephone listings, motor vehicle registrations, real estate transactions and public census data. They then sell them to sellers of goods and services who use the lists for sales and marketing purposes. The IRS is attempting to determine if commercial lists can supplement the variety of other efforts to identify persons who fail to file returns.

Senator COHEN. I want to interrupt you here, Mr. Egger.

Is it the IRS' intention to use commercial lists solely for the purpose of identifying nonfilers?

Mr. EGGER. Yes, that's correct, Mr. Chairman.

In the statement we've detailed the information which is in the lists which we have purchased. We fully intend to use that as a guide to determining the probability that a tax return should have been filed, and then that's set against our master file to see if there are people in those lists who did not file. It's solely for that purpose. We are not using it to attempt to determine the amount of income or any of that. We have much better sources of that kind of information than these broad estimates that are in these mailing lists.

Senator COHEN. Should there be a distinction? I believe Mr. Alexander will testify later that we should draw a distinction between nonfilers and those who underreport income.

Mr. EGGER. Definitely.

Senator COHEN. Do you believe there is a valid distinction to be drawn?

Mr. EGGER. Yes. For underreporting of income, we get most of our data there through the normal information reporting procedures, such as the 1099 data which we receive on interest, dividends, and a lot of other type of payments. We're not looking to this source for that kind of information.

Senator COHEN. Have you seen the front page of today's Wall Street Journal?

Mr. EGGER. I have not looked at the Wednesday copy.

Senator COHEN. There's an item in there dealing with real estate sales by individuals being checked for unreported gains. I'll just read it to you, because you have not had a chance to look at it.

> To test the technique, the IRS got data taken from public records by Real Estate Data, Inc. of Miami, on 1981 and 1982 sales of property in Dade County, Florida,

and San Mateo County, California. The data included buyers' and sellers' names, prices, and types of financing. The IRS plans to match sample transactions of tax returns to see if individuals reported capital gains and to see if those who gave mortgages on homes they sold reported the interest income.

That seems to go a little bit beyond what the IRS has said to date. Is this the same as a mailing list?

Mr. EGGER. It's a precursor to our consideration of whether or not we should amend the regulation, so as to require direct reporting of those real estate transactions, which we are authorized to do under existing statutes. But this is an experiment which we are using in Florida and southern California for the purpose of determining the efficacy of using commercially prepared information rather than developing it ourselves or asking everybody to report it.

Senator COHEN. I guess the point I'm raising, though, is that you say you don't intend to use this information for underreporters of income, but only for nonfilers. This experiment seems to go beyond that, because you are, in fact, using a commercially compiled list for the purposes of identifying people who might not be paying, let's say, capital gains taxes.

Mr. EGGER. I just wouldn't characterize this in the same class as a commercially prepared list. This is real estate information which is available in almost every community to every realtor for the purpose of being able to determine what's happened to this or that piece of real estate, in terms of transactions. We're simply looking into that to determine whether that might be a more efficient way of getting the information rather than expanding greatly our reporting requirements.

Senator COHEN. Why don't you continue, Mr. Egger.

Mr. EGGER. Let me skip over the comments about the commercial lists. I think we may have already covered that in our prepared statement.

Senator COHEN. I will come back to it later in dealing with this issue of profiling. I think that is something that has been raised by many people who are concerned about it.

Mr. EGGER. I would like to make one comment here, however. It has to do with the critics of the study that got so much attention in the press here of late. They suggested that the use of commercial lists is somehow unwarranted invasion of privacy. I think that that's a misstatement of the facts. Plainly speaking, this information is quite different from taxpayer information which we gather pursuant to the Internal Revenue code itself. Information in these commercial lists is available in raw form from public records and documents, and purchasing it in this form is simply more efficient than compiling it ourselves. Moreover, the lists are available to car dealers and furniture salesmen. If this public information can be used to sell everything from aluminum siding to magazine subscriptions, why shouldn't it be available for us to find tax cheats?

In addition to commercial lists, we also gather data in the nonfiler and underreporter areas through efforts such as the following: Data to identify nonfilers and underreporters has been gathered routinely via such forms as the W-2, the 1099, and so on. We get data from the private sector, as well as from Government sources, through information reporting required by legislation and regulation. Our information returns program, as you may know, matches data from these forms with data on taxpayer returns. We use this information to verify the correctness of amounts that are being reported on the returns. Our matchup will be about 91 percent of the 1099 information returns for tax year 1984.

The Service's major compliance functions, examination, collection, and criminal investigation, all have ongoing problems to collect data necessary to identify nonfilers or underreporter income.

The Service is also active in the international area through our Foreign Operations District. We administer tax treaties in force between the United States and 34 other countries, as well as negotiate mutual agreements with treaty partners on issues outside the scope of the treaties. In addition, we're involved with selected treaty partners in simultaneous examinations and industrywide exchanges of information, all aimed at enhancing international tax compliance. The increasing use of offshore tax havens, in abusive tax shelters and in blatantly fraudulent schemes, necessitates our having access to this type of information.

A Federal-State exchange program task force has recently completed its review of the exchange of information between the Service and State tax agencies. As you may know, IRS has for years cooperated with State taxing authorities through reciprocal contractual arrangements for the exchange of relevant tax information. The primacy focus of this group was on the increased availability of State information to the Internal Revenue Service.

During the course of this review the task force found that the Service may be able to make much better use of State information in the future than we have in the past. In a selected number of instances, the IRS shares information for tax administration and other authorized purposes.

As I noted earlier, disclosure of returns and return information is generally covered by Internal Revenue Code section 6103. The basic rule of this section is that taxpayer information is confidential and may be disclosed only as specifically authorized. There are a number of provisions in code section 6103 authorizing the Service to disclose returns or return information to other Federal, State, or local Government agencies, as well as the Congress.

In some instances, the agency is specifically identified by an authorizing subsection. In other instances, the provision does not specify a particular agency, but instead provides for disclosure to agencies for a specific purpose, such as enforcement of Federal nontax criminal laws. As a result, the IRS makes a variety of disclosures to Government agencies for a variety of purposes. A summary list of major disclosure programs is included as an appendix at the end of our prepared statement.[1]

Child support enforcement agencies are authorized under IRC section 6103 to obtain certain return information, including address information, in order to establish and collect child support obligations. Address information is provided to State and local child support enforcement agencies through the Parent Locator Service, Office of Child Support Enforcement, Department of Health and Human Services. In addition, child support enforcement agencies can obtain address information directly from the Internal Revenue Service under Internal Revenue Code section 6103(l)(6).

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[1] See p. 41.

Code section 6103(m)(2) provides for disclosures of a taxpayer's mailing address to officers and employees of a Federal agency, personally and directly involved in and solely for the use in the collection or compromise of a Federal claim against such taxpayer.

The code also provides for limited disclosure of the mailing address of a taxpayer who has defaulted on an educational loan. Again, under the code, address information, along with other information, can be disclosed to Federal agencies for the enforcement of nontax Federal criminal laws. Disclosures of address information can be made to locate fugitives from justice. The General Accounting Office can receive return information as a part of its audit of the Internal Revenue Service or other Federal agencies.

In addition, taxpayer information can be disclosed to the Congress under certain circumstances. The code provides for disclosure of a taxpayer's mailing address to officers and employees of the National Institute of Occupational Safety and Health, solely for locating individuals who are or may have been exposed to occupational hazards, to determine the status of their health or to inform them of the possible need for medical care and treatment.

We also perform a letter forwarding function for other Government agencies. The relevant policy statement provides in part, that the Service may agree to forward letters for other Government agencies. In the case of large volume requests, that is, 50 or more letters at any one time, the service will forward letters under an advanced written agreement that provides for reimbursement, provided the Service would not disrupt tax administration functions.

In the specific instances in which the general nondisclosure rule of section 6103 is overcome, the information that is shared with other Government agencies is clearly of value to those agencies and their programs. The question remains, however—what, if any, effect have transfers of data had on the tax system? This is a difficult question to which we have no definite answers at this time.

While it is clear that compliance levels improve when banks, employers and other payors share data with the Internal Revenue Service, we are not aware of any conclusive evidence that shows a definite relationship between voluntary compliance and our sharing data with other agencies. As you know, our research into individual voluntary compliance indicates a slow but steady overall decline in the percentage of compliance in recent years. We suspect, however, that factors unrelated to information sharing are responsible for this decline.

One thing that does seem certain is that the transfer of information between Government agencies will increase. As you already indicated, both the House and Senate versions of this year's major tax bill, provide for implementing the Grace Commission recommendations of income and eligibility verification for means tested benefits. Under this provision, we would make available to Federal and State agencies, data on both earned and unearned income for use in administering these means tested Federal benefit programs. The data would be provided solely for the purpose of verifying eligibility for those programs, and agencies receiving that data would be subject to all existing safeguards on the unauthorized disclosure of that information.

I don't believe anyone can argue against the use of tax information to prevent potential fraud or abuse in Government benefit programs—to do so would eventually cost honest taxpayers more than they already pay. On the other hand, wide dissemination of taxpayer information may degrade voluntary compliance and taxpayer respect for the system. Each time the nondisclosure rule of section 6103 is breached, it becomes easier to make additional exceptions in the future.

As you can see, there are significant countervailing public policy arguments on whether IRS should share information with other governmental agencies. Further, those issues go far beyond the questions of tax administration.

Mr. Chairman, it's clear from what we've already said this morning that large amounts of information are being transmitted in society today for a number of perfectly valid reasons. In our case, however, the data we share with others must be safeguarded in accordance with strict standards contained in section 6103. Let me describe briefly for you how we attempt to ensure the protection of the data we do share.

From 1978 to 1982, the Service conducted periodic onsite reviews of Federal and State agencies which are identified in the code section as being subject to the safeguard requirements of the code. After satisfying ourselves that these agencies generally met IRS standards for security and disclosure, we switched to a self-certification program in 1982. This program requires each recipient agency to submit an annual report and to conduct internal inspections of its safeguards. The Service evaluates the annual reports and conducts onsite reviews on an as-needed basis.

If an agency fails to properly safeguard the data, the IRS may discontinue making disclosures to that agency. In addition, the Internal Revenue Code provides criminal penalties for employees who willfully disclose tax data in an unauthorized manner and provides civil relief in the case of willful or negligent unauthorized disclosures.

In my view, the major issue raised by IRS participation in programs of the type that we talked about here today is the need for balance. The integrity of the tax system, in general, and taxpayer privacy in particular, must be balanced against the need to provide efficient and effective cooperation between agencies on matters of national importance. That balance has been struck in our disclosure laws, where Congress has weighed the individual's expectation of fairness and privacy against the legitimate needs of other agencies.

Under those laws, we are permitted to release tax information only to the extent specifically authorized. We recognize that our unique voluntary compliance system of self-assessment depends not only upon the maintenance of strict confidentiality of tax information, it also depends on the public's faith in our efforts to preserve and defend the integrity of the data which the public provides to us. As a result, we scrupulously screen each request for tax information to ensure that it conforms with all of the substantive and procedural requirements which have been established by the Congress.

Now, Mr. Chairman, my associates and I will be pleased to try to respond to any questions.

Senator COHEN. Thank you very much, Mr. Egger. I agree with you on the need to strike a balance. Part of the difficulty occurs, however—and I think you used the phrase—"Each time the confidentiality rule is breached." There is some significance, I think, to the word "breached." On the one hand, we say, in 1976, because of abuses that took place during the early 1970's, we want strict confidentiality, then in the intervening 10 years, or actually 8 years, we start eroding that confidentiality little by little, one slice at a time. I must tell you that I have voted for a number of those breaches. It comes to a question of whether you are going to share IRS information for example, with the drug enforcement agencies to try and stem the flow of drugs coming into this country. Is that a social goal that we ought to pursue? The answer has been yes.

Should we allow the IRS to collect moneys or not refund tax moneys going to people who don't pay their child support payments?

To what extent do these exceptions that we keep carving out one by one—for admittedly socially desirable goals—have an impact upon your job of collecting taxes? For example, I am told that a study was conducted which showed that as a result of an act passed by Congress which allows you to offset taxes collected to those who don't pay their child support, there has been a dramatic drop in the rate of compliance by those people who have had their tax refunds offset. In fact, the study showed that tax payers who had their refunds offset were twice as likely to not file a tax refund as those who did not have their refunds offset.

Is that correct?

Mr. EGGER. That is correct, Senator Cohen. The study so far reflects only data from one year, so we feel that it's a little premature to draw specific conclusions. But you are quite correct in that the tracking of each of those accounts, where we had a refund offset in the prior taxable year, showed a fairly steep increase in the number of those individuals who failed to file a return, and the amount of their refunds decreased significantly. Many of them turned into what we call "balance due returns" instead of "refund returns," thus posing potential collection problems for us.

Senator COHEN. The IRS study did come to a conclusion. It said:

> Since the refund offset is the only critical tax related item that differentiates these two groups of taxpayers, the probable cause for the disproportionate number of the non-filers noted is the fact that the tax refund was not forthcoming.

Mr. EGGER. I have no doubt but that it does have a definite negative effect on taxpayer compliance.

Senator COHEN. And, of course, we in Congress have now authorized approximately 29 exceptions to the rule of confidentiality. The question is at what point in time do we continue to authorize these exceptions and what is going to be the impact?

Have you, beyond this one study, conducted any other studies on the effects of these disclosures on voluntary compliance? Are you aware of any studies that have been done that would indicate what the impact would be upon the voluntary nature of taxpayer compliance?

Mr. **Egger**. No, we do not have any other studies except that one. That's the only one where we have been able to make a specific comparison between an identified group and a control group.

Senator **Cohen**. Do you think it would be helpful for us in Congress to have the benefit of such studies?

Mr. **Egger**. Absolutely. And we will share that with you. We are attempting to look now into other ways of evaluating that same kind of thing. It's extremely difficult.

Senator **Cohen**. Do you plan to do any broader studies, other than the nonrefunding of taxes to those who don't meet their child support obligations?

Mr. **Egger**. We don't have any specific studies at this point.

Senator **Cohen**. Who should undertake these studies in your judgment? Should it be IRS or the Department of the Treasury? Should it be the GAO? Who should undertake a study to determine whether or not Congress, in its effort to become efficient and to go after the tax cheaters and to prevent fraud, waste and abuse, is in fact having a counterproductive impact on tax collection itself? Who should do this?

Mr. **Egger**. I think we are perhaps the only ones who can really do it, given the need for such a vast amount of information. The difficulty is that there are so many factors which affect compliance that I seriously question our ability, except in these specific instances, to develop that kind of particularized information. Now, it very well may be that, as these programs go on, particularly the additional one that is in pending legislation, that there we can develop the same kind of testing that we have in the child support situation.

Senator **Cohen**. Should we take this as sort of a warning flag?

Mr. **Egger**. That's the purpose of it. That study is on-going, by the way, in each successive tax year. Additional legislation which has been proposed to expand that program, beyond the AFDC families into all child support programs. We would expect to study the impact of this on taxpayer compliance.

Senator **Cohen**. Mr. Egger, let me come back to the question about the use of commercial mailing lists and the potential for either the targeting or profiling of taxpayers. I think the press has raised some legitimate concerns that the use of this private or commercial data could in fact lead to developing a file on the "lifestyles" of taxpayers. Is there any prohibition on the IRS collecting this information now?

Mr. **Egger**. There is no specific prohibition, to the best of my knowledge, if we set out to develop that kind of profile. Possibly, the Privacy Act's rule that information collected must be necessary might generally prohibit this use. But, candidly, I don't see that as doing us any good.

We have so many more specific ways to deal with underreporting and such other means of tax avoidance and evasion, that developing that kind of profile is not a very efficient way. Therefore, I can't imagine us doing it.

Senator **Cohen**. But you would use it for nonreporting?

Mr. EGGER. We would simply use that along with a long list of other sources to attempt to identify those who failed to file returns. If a person doesn't file a return, we don't have specific information that they didn't file. Then it's sort of a needle-in-the-haystack kind of pursuit to attempt to identify those who haven't filed. So, we use the W-2's. We use the 1099's. We use a variety of other sources of information. This is simply another experiment to determine whether this kind of information will be fruitful for that purpose.

Senator COHEN. You would agree, though, that the potential is there for a profile development of a taxpayer? Let me give you an example. Let's suppose that I'm on the list of L.L. Bean purchasers and I have an L.L. Bean catalog. That might raise certain questions characteristics in line with some of that information. The IRS could presume, for example, that I might be driving a Volvo—[laughter]—I might be wearing a Hathaway shirt, Bass shoes, Weejuns. Suddenly there is a certain character profile of that type of individual which tends to place him or her in a certain income category. Wouldn't it be relatively easy to develop a profile like that on an individual?

Or, if I were on Fifth Avenue, and for whatever reason and I went into Tiffany's. I looked around, and I was staggered by the cost of items. Nonetheless, I signed a slip, and they put me on their mailing list. Suddenly, you have a Tiffany's mailing list in which Bill Cohen is on that list, or somebody else. Couldn't that raise again the issue of who is this person who receives this meager congressional salary—[laughter]—and what is he doing in Tiffany's shopping around, being on that list? Isn't that really the danger of what is going on now with the use of commercial lists? If you overlap commercial lists with the L.L Bean catalog, the Tiffany catalog, or mailing list, and then you go after real estate transactions of this particular firm down in Dade County, FL, or San Mateo, CA, and you start looking at combining all these names in the computer files, then you have a lot of information on certain individuals. Yet, there has been no indication that those individuals have violated any tax laws. Isn't that an inherent danger in the system?

Mr. EGGER. I can't imagine anybody doing it because I can't think of what possible benefit it would be to the system of tax administration. We couldn't begin to handle 100 million individual tax returns, evaluating them from the standpoint of developing those kind of profiles. It would raise more questions than it would answer, and I'd like to separate the specific information reporting from that kind of profiling.

In the case of interest reporting, dividend reporting, independent contractor payments, security transactions and all of those things that are required to be specifically reported on the tax return—it's a simple matter for us to develop a program where we take specific data of that sort and match it against the master file to determine whether or not that transaction or that particular income source was reported. That's quite different than somebody finding they are on a mailing list from Tiffany's, or whatever, and then trying to leap from that to an evaluation of their income levels.

The whole purpose of what we are doing in these commercial lists is to determine whether or not that is a fruitful resource in identifying taxpayers who are likely to have had a tax liability.

That's why we have limited it to estimated incomes above $10,000. On anything below that the probability is so high that the head of the household wouldn't owe any tax, certainly no sizeable amount of tax, that we are sure that that wouldn't be beneficial. So we want to start with a minimum of $10,000.

And these estimates are based on a lot of guesswork by the people who put the lists together, based on income average figures that they get by community and other indicators of household income. We want to try to make this as efficient as we can in terms of using it for the purpose of identifying nonfilers. It is totally inefficient to assume that we can take that kind of information and use it in any way for verifying taxable incomes.

Senator COHEN. I saw a national program some years ago on the networks in which they took a private company who analyzed charges on Master Charge or VISA and totally constructed the lifestyle of a couple within a matter of a few days by the charges. By looking at the charges, you could determine whether one buys flowers at a florist shop, whether one eats downtown at one of the major restaurants or on Capitol Hill, such as the Senate Dining Room versus Rive Gauche. In a matter of a very short period of time you could totally construct a lifestyle of a couple or an individual.

Now, if a private company could do it why couldn't, in a matter of a few years as we continue to get more sophsiticated with our own Government computers, do the same thing?

Mr. EGGER. I think you probably could get some impression, but it would be a tremendous use of resources in a most inefficient way unless you had reason to believe that that particular taxpayer was somehow attempting to defraud the Government. Clearly when we do networth studies in some of our criminal investigations, you bet we look at those kind of things to determine whether the taxpayer spent more money than he reported on his tax return. But that's after we have every reason to believe that we have a fraud situation on our hands to begin with.

Senator COHEN. What about the information that's actually used in these private source lists? What about the accuracy of them? You say you would use them for perhaps ferreting out nonfilers, as opposed to under-reporters? What about the estimates that are used in those private sources? Do you have a mechanism for checking them? In other words, if you see something that's in a file that indicates that this person declares himself to be in the $25,000 to $50,000 bracket and therefore belongs on that mailing list, how do you verify that? Do you?

Mr. EGGER. We don't have that kind of information in what we are getting. Essentially all we are getting is the names, identities, and ages of the household, along with an income estimate, and that kind of thing, simply to give us some impression that here is an individual that probably should file a return and then attempting to identify whether they did or not. We don't have any information about what kind of mailing list they are on, or what kind of cars they drive, or any of that. That's not included in the information we require.

Senator COHEN. Do you think we ought to have any statutory guidelines or requirements, such as a notice that a computer match is being performed relative to a taxpayer when you are matching it up with private data? Is that something that you think is a good idea?

Mr. EGGER. Our manual is public, and we pretty well spell out in there how information is to be used. We certainly aren't trying to hide from the public what our procedures are.

I would say this, that in given investigations—and believe me we've got a lot of them going on around the country—of outright fraud, I would hate to have to communicate with that taxpayer by saying, "by the way, we are going to investigate thus and so tomorrow morning," because by the time we got there, the information would have disappeared. But, in general, our procedures and the things that we use in normal verification and so on, are very well known to the public and people can find out what they want to there. Our manual is public and sets forth all of our policies and procedures.

Senator COHEN. I doubt if anybody reads the code, not to mention your manual. [Laughter.]

Mr. EGGER. You would be surprised. A lot of people read our manual. We get letters about it all the time.

Senator COHEN. I would say the average citizen doesn't read your manual and I don't think he reads the code. [Laughter.]

Mr. EGGER. A lot of the information is public. And I think what the problem is, and I've said this earlier in my testimony, there is not enough understanding by the general public of what we do or why we do it. I think that's something we need to pay more attention to. I think that's the root of a great deal of problems.

Senator COHEN. I mentioned before in my opening statement that a tax bill now pending in conference is going to require you, the IRS, to share unearned income data with the Federal and State agencies which administer those programs: SSI, AFDC, Food Stamp, the medicaid programs. This is really the largest I believe, or one of the largest, tax information sharing programs that's ever been authorized by Congress. The question I have is whether you have any reservations about providing this information for this sort of a match?

Mr. EGGER. I have concern as to what it may do to the public perception of the confidentiality of the tax information, and therefore, could have some deleterious effect on voluntary compliance. It's this kind of weighing back and forth that I have alluded to before, and I think this is one that the Congress has to be very conscious of, because, candidly, we do not know what specific effect it will have on voluntary compliance in this country. I've just came back from a meeting with some of my counterparts representing some 40 countries around the world, and I can assure you that every one of them has some or all of the same problems we have, most of them to a much larger degree.

Everyone looks to the United States as the image of the outstanding example of a tax system based on voluntary compliance. My job is to see to it that we don't do any violence to that position and that we, if anything, improve it. Therefore, at most, I can express my concerns about this additional inroad into the confidentiality, but I have to say at the same time, I don't know what specific result it will bring about.

Senator COHEN. Are you concerned about adequate security maintained by the States in terms of the dissemination of the information? You mentioned before that there are criminal penalties for the unauthorized disclosure of tax information, if you can show willfulness. That's going to be very hard to prove. You mentioned civil remedies if you can show negligent conduct. That may be even harder to prove. It could have been a typographical error or the wrong button that could have been punched on a computer terminal that caused the disclosure. What about those kinds of accidental disclosures? What about computer security in the 50 States? They have different levels of computer systems. I also assume they have very little in the way of adequate safeguards. We have very little in the way of adequate safeguards in our own systems here at the Federal level against those who were hacking into the system. You know what I'm talking about—"computer hackers."

Mr. EGGER. We have, in all of our computer-based programs in the developmental stage, a high priority, and that is the security of the information. We're examining a wide variety of means of doing that, all the way from encryption to other means of protecting data transmission. With the massive amounts of data that we and the States have to deal with, even if somebody did get into it, it would probably take them forever to make much out of it, because it's rarely transmitted in a form that would be usable.

Senator COHEN. Isn't there also a problem because of the form in which it is transmitted to the States?

You have perhaps 50 different systems. Is there going to be a move toward standardization of the information?

Mr. EGGER. We are working with the State tax administration people to try to bring their and our systems as much in line as we can, so that they are compatible. For the most part, I think the States, because they do depend upon us so greatly for tax administration data, make every effort to do that.

Senator COHEN. That has been one of the issues raised by the GAO. Another one is the following: the GAO has said there are several limitations with respect to the use of tax information with other agencies. It's stated, for example, that the unearned income received by the IRS from banks, by way of example, can be anywhere from 2 to 14 months old when it's reported to you, the IRS. By the time that you complete your processing of the file, that could be another 10 months or so, in the case of unearned income data. The question then becomes whether outdated information is a problem for agencies in determining whether or not someone qualifies for being a recipient of government benefits. You're dealing with something that could be as much as 2 years old.

Mr. EGGER. I think it remains to be seen whether the data will be sufficiently timely for them to use it in these means-based programs.

Quite apart from that, we are making every effort to find ways to speed up the processing of that information, because it will be more useful to our own tax administration, but you're quite right. Some of that information, by the time we have processed it, is quite old, perhaps 2 years old or something of that sort. And it might not be as useful to those agencies as they think it's going to be.

Senator COHEN. In some of the material you gave the committee staff, you describe the IRS Task Force Report on Federal-State Exchange of Information, and that report recommended that the IRS compile a detailed inventory of information that's available from State agencies.

I have several questions along these lines. Would the information include only information available to the State tax agencies? For example, tax information reported to the States by individal taxpayers in their State tax returns?

Mr. EGGER. It goes beyond that. We work through the State tax agencies, but we get information that is not compiled solely by tax administration in the States. It's compiled by other State agencies.

Senator COHEN. Registrations, permits, licenses?

Mr. EGGER. Yes; that kind of thing that's available to the State tax administration. Let me tell you how that came about.

Senator COHEN. How would you use that information and what is the purpose behind getting all that?

Mr. EGGER. Let me give you some background on that. As you may or may not know, I have a so-called commissioner's advisory group. It's made up of citizens, people from academia, as well as tax practitioners, and so on. They meet about four times a year. These are public meetings, open to anyone who chooses to attend. At a meeting last year, one of the advisory group members raised the question of what we did with the states. Some discussion of the State-Federal exchange program evolved. The question was raised, "Well, do you really know what all the different districts are doing with the States?" We agreed that we didn't know.

So at the suggestion of someone on the group, we put a task force together to try to inventory, if we could, the various programs and the various information sources that we were using, to see whether or not we might exchange that information or provide that information with the other districts who were not doing that same sort of thing. We've been getting information from states for a variety of reasons, not just tax return data, but an attempt to locate people for collection purposes, things of that kind. And we found that information to be quite fruitful.

So we put the task force together to look at it and to come up with ideas of what we are doing, but also ideas of things that we might do. That group has put together a report which was furnished to the subcommittee, and we're in the process of looking at that report, to identify the suggestions that are worthy of followup. We haven't done anything with it at this point. I just got the report myself about the time you got it. So we're evaluating it.

Some of those suggestions in there are probably theoretically valuable suggestions, but practically speaking, we have some difficulty in trying to use them up because of the costs involved.

Senator COHEN. But in terms of looking at information from registrations, permits or licenses, do you think that we ought to have any concerns about the privacy issues raised by the IRS looking at that information?

Mr. EGGER. These things, by and large, are available to anybody in the public. They're almost never confidential.

Senator COHEN. A person doesn't have too much to fear when the information goes to L.L. Bean or another private company. It might have more to fear when this information goes to the IRS.

Mr. EGGER. Why should they have anything to fear from Internal Revenue, if they're complying with the tax laws?

Senator COHEN. They may not have anything to fear from IRS, but IRS is now sharing information with a lot of other people, and they might have legitimate concerns. They may say, for example, "I have nothing to hide as far as IRS is concerned, but at one point, I knew that information was going to you, and I felt fairly secure. Now I'm not sure anymore. Now all of this information is being spread out to maybe even private debt collection agencies. I may have fears of others coming back to the local level. I don't want to share that information with my local neighbor, who may be working in the local statehouse, and that sort of thing."

So I'm just saying that is information being gathered from many, many sources, flowing into the IRS. If it's just flowing into IRS that's one problem. It's a bigger problem when it's now flowing back the other way.

Mr. EGGER. The information which we get from the States, by and large, is used at the local level, as distinguished from us trying to compile anything on a centralized basis.

Senator COHEN. You say that, and I accept that. The question is, is there anything which is written in your regulations? Is there anything we should be concerned about to make sure that it stays within our area and not back at the local level?

Mr. EGGER. I think the Congress always needs to be concerned with the extent to which taxpayer information is shared outside tax administration for nontax purposes. I think that's the purpose of 6103. I think there is some concern on my part that there is an eroding of that provision. As a tax administrator, obviously, I prefer to keep it all in the tax administration, simply because I feel that that achieves the maxiumum positive impact on tax compliance. Unfortunately, there are other very compelling public reasons why it needs to be shared. Some of them are things one could not possibly disagree with, such as our ability to put agencies in touch with people who may have been exposed to some particularly difficult or dangerous situation in their occupation. We can reach those people. These are humane things. Nobody's going to argue with that.

So as I say, each and every one of these things has a little bit to support it.

Senator COHEN. Each one is individually justifiable from a social point of view. The question becomes what the totality is as they start to add up. Do the exceptions overwhelm the rule itself?

Mr. EGGER. Absolutely.

Senator COHEN. It was recently quoted in the New York Times that an IRS office in Texas sought to establish electronic links with the computers from 80 counties in order to obtain instant access to local records, such as property tax, voter registration, and car ownership records. Apparently, that request was met with some instant opposition, on the grounds that the information should not be used by the IRS.

I was wondering, No. 1, is that attempt still ongoing? No. 2, do you need any authority for that? Under what authority, I should say, is it being conducted? And, No. 3, do you believe that if you expanded this program to a nationwide basis that you would have a similar kind of opposition that you had in Texas?

Mr. EGGER. I'm not totally informed as to the precise current status of that effort. The point is, that all we have done is to access the information directly through our computer tie-in rather than sending people over there to pore over the records and copy them down. It's simply a technique of getting the same information that we would have been getting anyway.

Senator COHEN. This issue was raised over 1 year ago when we first started these hearings. The question is whether or not there is an intrusion or invasion of privacy by the use of computer matching. Let me give you an example. As I recall, I used this example well over 1 year ago. It shows you how conservative I am, still quoting a year-ago example. When an investigator goes into a bank to check up on a particular citizen, if he goes in, physically, to the bank and makes a request, chances are that the particular person is going to be put on notice that an investigation is being conducted. That to me, may be far more beneficial, in terms of protecting the individual's right of privacy, as opposed to someone sitting down in Washington looking at the screen of a computer terminal and getting all of the information without any notice every being conveyed to this person, that this person's records are being checked.

As we're moving into this information age, perhaps use of the computer is a more efficient way. We have to be concerned, however, about whether that efficiency ought to be subordinated to an overall concern for privacy. So it's not only that you're tying into all of these records by computer to make it more efficient, rather than sending one of your agents in to do the checking. Sending an agent might put that individual taxpayer on notice that something is amiss. That may be a more desirable situation than simply having somebody down here tapping away at the computer, looking at all of these things, such as how many boats a taxpayer has or whether a taxpayer has registered his Mercedes or Dodge Charger.

Mr. EGGER. I would like to draw a distinction between information sources which are open to the public and information which we are entitled to obtain only through a summons procedure. We simply cannot walk into a bank and start going through records. We have no authority to do that, because that's not public data. But real estate transaction records and all of that, anybody can go in there and spend as much time as they want to.

Senator COHEN. But you're not anybody, you're something special. You're the IRS. Nothing sets people's feet running more quickly than saying, "Hey, the IRS is checking into this."

Mr. EGGER. That's something I'd like the Congress to help us with, is to make sure that people who are complying with the tax laws know full well that merely because the IRS is looking at something doesn't mean that they've got to go home and hide under the bed. That's the whole point. What we're trying to do is to see to it that the individuals understand that with 100 million individual returns that we deal with in the course of a year, we have to develop programs for verification and, in effect, for the ability to check up on the correctness of the return and thereby make corrections of those returns that are filed improperly or incorrectly.

I don't know why that needs to evoke a lot of fear.

Senator COHEN. Well, it evokes a lot of fear, because you say that you're checking to see whether somebody has adequately complied with the law. Now let's see what kind of information you're relying upon. First, you start off with a tax return. You say, "Let's see if that tax return really is accurate." Then you'll start looking at mailing lists. You'll look at Tiffany's mailing list and will look at the purchases there. You will start matching it, taking a whole category of people. I would say, frankly, that your chances of looking at the upper income groups are much better. Those individuals who do not file the W-2 forms are not having their withholding taken out by the employer, but they're self-employed. They may have a better chance of being targeted or profiled by the Internal Revenue Service to see whether or not they are, in fact, filing accurate returns. So the question becomes how much information, where are the sources coming from by the IRS, and then, assuming that that information is being properly collected, where is it going.

It's a concern over the use of the power by the Internal Revenue Service, and the question of whether the information is going to be disseminated to other people. I think that's something we ought to be concerned about.

Mr. EGGER. I think the Congress should be concerned with that. I think we need to make the public aware of what we obtain and why we obtain it, so long as it doesn't violate the obviously necessary secrecy in the case of criminal investigations and things of that kind. If we didn't have to deal with such a broad base of tax evasion today, in the form of phony tax shelters and outright other fraud, we could devote our time to a more general audit. Then the auditing can serve its other purpose, which is correcting the returns that are incorrect, also to monitor the system to find out what things are not being understood by the public, which ones are being misinterpreted, which ones are being misapplied, and which ones are not working. Unfortunately, we are spending far too much of our time cracking down on people who do not want to pay their share of taxes.

Senator COHEN. In the tax bill in conference that I mentioned before there is now a provision that would offset tax refunds for any certified debt owed to the Federal Government.

Do you anticipate you will have a similar experience that you had with a nonrefund of taxes going to people who don't pay child support?

Mr. EGGER. Yes. I think they go hand in hand. It's another area where it raises a question of the impact on the public perception, but again, it has to be balanced against the need to find ways to make people live up to their responsibilities, whether it's debt to the Government or improper receipt of benefits, or whatever.

Senator COHEN. The GAO found that when the Social Security Administration transferred wage data to the Food Stamp Program and the AFDC Program, it did not monitor whether or not that information was safeguarded.

You mentioned before that you intend to take a number of measures to see whether or not the States are safeguarding that information?

Mr. **Egger**. We do in all cases where 6103 authorizes to do that. Some of the data that we give out, were not authorized to pursue it or not required to see to its security, but in most instances where we disclose data to various agencies, I write a personal letter to the head of that agency, whether it be a Cabinet officer, a commissioner, or whatever, and explain to that individual what the safeguards are and reminding him or her of the criminal and civil sanctions for improper disclosure. Also we work out with them a program for reviewing their procedures to make sure that they do follow the proper safeguards.

Senator **Cohen**. Just one final question. You have a master file consisting of information which is being collected by third parties, and this master file is growing. For example, it now contains information from banks, brokers, independent contractors, information on tip income, State and local tax returns, plus the other information at the State and local level. As this information grows and is more extensively made available to other agencies for matches, is the distinction of information coming from third parties and from individual taxpayers going to be blurred? Are you going to be able to maintain separation of the information coming from tax sources as opposed to third party sources?

Mr. **Egger**. Yes. Our master file includes only information from the tax returns. The 1099 third party data, and so on, is simply kept aside. Then we match that up against the tax return information and see to it that the two are comparable—that is to say, they match up. Where there's a mismatch, then we take a look at the detail of the return and the detail of the third party data to find out whether or not it was reported in some different fashion or whether it was included with some other items or whatever.

Senator **Cohen**. In other words, before you were to notify a taxpayer that he or she is under an audit, you would verify that third party information for its accuracy?

Mr. **Egger**. Oh, yes. We eliminate more than half of the mismatches on that basis alone.

Senator **Cohen**. I would turn to my colleagues, but there are no other colleagues here to question you. [Laughter.]

I thank you very much, Mr. Egger, for your testimony.

[Mr. Egger's prepared statement, with attachments, follows:]

OPENING STATEMENT
ROSCOE L. EGGER, JR.
COMMISSIONER OF INTERNAL REVENUE
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
SENATE GOVERNMENTAL AFFAIRS COMMITTEE

JUNE 6, 1984

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE WITH YOU TODAY TO DISCUSS THE SAFEGUARDS AND PROCEDURES THAT ARE APPLICABLE TO THE TRANSFER OF INFORMATION BETWEEN THE IRS AND OTHER GOVERNMENTAL ENTITIES. IN ADDITION, I WILL DISCUSS THE SERVICE'S USE OF INFORMATION THAT IS OBTAINED FROM PUBLIC SOURCES SUCH AS REAL ESTATE RECORDS AND COMMERCIAL LISTS. DETAILED BACKGROUND INFORMATION ON THESE ISSUES TO BE COVERED HAS ALREADY BEEN PROVIDED TO THE SUBCOMMITTEE STAFF.

WITH ME TODAY ARE WALTER E. BERGMAN, THE DEPUTY ASSISTANT COMMISSIONER (PLANNING, FINANCE, & RESEARCH), AND ARNOLD B. GORDON, ACTING DIRECTOR OF THE DISCLOSURE AND SECURITY DIVISION, WHO WILL ALSO BE AVAILABLE TO DISCUSS ANY ISSUES THAT MAY BE RAISED BY MY STATEMENT.

OVERVIEW

TODAY'S HEARING FOCUSES ON HOW THE SERVICE COLLECTS, MANAGES AND PROTECTS INFORMATION. AS THE AGENCY CHARGED WITH THE ADMINISTRATION OF THE NATION'S TAX LAWS, WE ARE PRIMARILY IN THE INFORMATION BUSINESS. BOILED DOWN TO ITS BASICS, AMERICAN-STYLE TAX ADMINISTRATION INVOLVES TAXPAYERS VOLUNTARILY PROVIDING INFORMATION TO THE IRS ON THEIR TAX RETURNS. TO A GROWING DEGREE, THE INFORMATION IS THEN EXAMINED IN LIGHT OF OTHER INFORMATION THAT WE RECEIVE FROM EMPLOYERS, OTHER PAYORS, AUDITS, AND OTHER SOURCES.

CERTAINLY AMONG GOVERNMENT AGENCIES, AND PROBABLY IN THE PRIVATE SECTOR AS WELL, THE SERVICE IS AT THE FOREFRONT OF THE REVOLUTION IN INFORMATION MANAGEMENT. THE SERVICE CURRENTLY EMPLOYS STATE-OF-THE-ART TECHNOLOGY IN ITS EFFORTS TO KEEP COSTS LOW AND EFFICIENCY HIGH. WE SUCCEEDED IN PROCESSING WELL OVER 171 MILLION TAX RETURNS LAST YEAR AND IN KEEPING TRACK OF MILLIONS OF COLLECTION AND EXAMINATION PROCEEDINGS THROUGH THIS TECHNOLOGY.

BUT DESPITE ALL OUR SUCCESSES, WE RECOGNIZE THAT THE INTELLIGENT USE OF TAX INFORMATION GATHERED FROM TAXPAYERS AND THIRD PARTIES INVOLVES A MATTER OF BALANCE -- EFFICIENT TAX ADMINISTRATION ON THE ONE HAND AND THE INDIVIDUAL'S RIGHT TO PRIVACY ON THE OTHER. AS PART OF THE TAX REFORM ACT OF

1976, THE CONGRESS CAREFULLY CONSIDERED THIS BALANCE, AND AS A RESULT REVISED INTERNAL REVENUE CODE SECTION 6103, "CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION". ALTHOUGH THIS STATUTE IS FREQUENTLY REFERRED TO AS THE TAX LAW'S "DISCLOSURE STATUTE", IT IS IN REALITY A "NON-DISCLOSURE" STATUTE THAT GENERALLY PROHIBITS THE RELEASE OF TAXPAYER INFORMATION.

AS I WILL DISCUSS LATER IN THIS STATEMENT, WE DO MAKE DISCLOSURES TO A NUMBER OF ENTITIES FOR A VARIETY OF PURPOSES; HOWEVER, EACH OF THESE SITUATIONS IS CAREFULLY LIMITED AND SPECIFICALLY AUTHORIZED BY SECTION 6103.

IMPORTANCE OF CONFIDENTIALITY

CURRENTLY, THE EFFECTIVENESS OF OUR TAX SYSTEM RESTS ON VOLUNTARY SELF-ASSESSMENT. WHILE WE DO GATHER INFORMATION FROM OTHER SOURCES, THE ESSENTIAL INGREDIENT IN THE ADMINISTRATION OF THE TAX LAWS IS THE INFORMATION PROVIDED ON TAXPAYERS' RETURNS. WITHOUT THE COOPERATION OF THE VAST MAJORITY OF TAXPAYERS, THE SYSTEM WOULD SIMPLY COLLAPSE. CONSEQUENTLY, WE ARE EXTREMELY SENSITIVE TO ANY CHANGE THAT MIGHT ENDANGER LEVELS OF VOLUNTARY COMPLIANCE.

IN ORDER TO ENFORCE THE TAX LAWS, THE SERVICE DOES ASK TAXPAYERS FOR A GREAT DEAL OF INFORMATION, AND MUCH OF THIS

INFORMATION IS OFTEN CONSIDERED TO BE OF A SENSITIVE OR CONFIDENTIAL NATURE. BECAUSE WE FEEL THAT TAXPAYERS WILL BE MORE WILLING TO PROVIDE THE TAX INFORMATION IF THEY KNOW THAT THE IRS HANDLES IT ON A CONFIDENTIAL BASIS, WE ARE EXTREMELY CONCERNED ABOUT ISSUES OF CONFIDENTIALITY, AND AS A RESULT, CAREFULLY GUARD AGAINST IMPROPER DISCLOSURE.

SEEKING TAXPAYER IMPRESSIONS OF CONFIDENTIALITY

TO HELP US GET A BETTER UNDERSTANDING OF HOW THE PUBLIC PERCEIVES THE ISSUE OF CONFIDENTIALITY, THE ROPER ORGANIZATION IN FEBRUARY OF THIS YEAR COMPLETED A SURVEY ON THE PUBLIC'S PERCEPTION OF THE CONFIDENTIALITY OF TAX RETURN INFORMATION. THE RESULTS OF THIS SURVEY ARE SOMEWHAT MIXED. FOR EXAMPLE, WHILE 14% OF THE RESPONDENTS FELT THE IRS RELEASED INFORMATION FREELY, 31% AGREED THAT THE SERVICE KEEPS THE INFORMATION CONFIDENTIAL. UNFORTUNATELY, WELL OVER HALF THE RESPONDENTS FELT THAT OTHER GOVERNMENT AGENCIES COULD GET TAX INFORMATION WITHOUT MUCH DIFFICULTY.

OVERALL, MR. CHAIRMAN, I THINK THE ONE MESSAGE IN THESE SURVEY RESULTS THAT WE MIGHT ALL AGREE ON IS THAT OUR EFFORTS TO WISELY MANAGE AND SAFEGUARD TAX INFORMATION ARE NOT ADEQUATELY COMMUNICATED TO THE PUBLIC. WE PLAN TO DO ALL WE CAN TO IMPROVE OUR RECORD IN THIS AREA.

IRS USE OF COMMERCIAL LISTS

AS I MENTIONED, THE SERVICE COLLECTS INFORMATION FROM A VARIETY OF SOURCES. ONE SOURCE THAT I UNDERSTAND IS OF INTEREST TO THE SUBCOMMITTEE IS COMMERCIAL LISTS.

COMMERCIAL LISTS CAN REFLECT A VARIETY OF INFORMATION, BUT TYPICALLY THEY WOULD SHOW SUCH THINGS AS THE NAMES OF HEADS OF HOUSEHOLDS AND ESTIMATES OF HOUSEHOLD INCOMES. PRIVATE COMPANIES PREPARE THESE LISTS USING PUBLICLY AVAILABLE RECORDS, SUCH AS TELEPHONE LISTINGS, MOTOR VEHICLE REGISTRATIONS, REAL ESTATE TRANSACTIONS AND PUBLIC/AGGREGATE CENSUS DATA (THIS CENSUS INFORMATION DEALS WITH AVERAGE INCOME AND FAMILY SIZE IN CENSUS TRACTS, NOT THE CENSUS FORMS FILED BY INDIVIDUAL HOUSEHOLDS.). THEY THEN SELL THEM TO SELLERS OF GOODS AND SERVICES WHO USE THE LISTS FOR SALES AND MARKETING PURPOSES. THE IRS IS ATTEMPTING TO DETERMINE IF COMMERCIAL LISTS CAN SUPPLEMENT A VARIETY OF OTHER EFFORTS TO IDENTIFY PERSONS WHO FAIL TO FILE RETURNS.

IN OUR STUDY ON THE USE OF THESE LISTS TO IDENTIFY NONFILERS, WE ARE SEEKING ONLY INFORMATION NEEDED TO DETERMINE WHETHER THERE WAS AN OBLIGATION TO FILE. CONSEQUENTLY, ESTIMATED ANNUAL INCOME IS OF PRIMARY INTEREST. BUT OTHER INFORMATION, SUCH AS AGE AND THE NUMBER OF PEOPLE IN A HOUSEHOLD MAY ALSO BE LOOKED AT BECAUSE THESE FACTORS AFFECT FILING REQUIREMENTS. AS A RESULT OF THIS STUDY, NO EXAMINATION OR COLLECTION ACTIVITY WILL BE INITIATED ON THE TAXPAYERS WHO

ARE NOT PART OF THE STUDY. NOTWITHSTANDING SOME UNFORTUNATE CHARACTERIZATIONS OF THIS STUDY, WE ARE NOT CONCERNED WITH THE LIFESTYLES OF TAXPAYERS. I BELIEVE OUR CONTACT LETTER FOR TAXPAYERS IN THE STUDY, A COPY OF WHICH IS ATTACHED, SHOWS THIS CLEARLY.

A COMMERCIAL LIST FILE WITH 1982 DATA WAS OBTAINED IN DECEMBER 1983. THE FILE CONTAINS INFORMATION ON ABOUT TWO MILLION HOUSEHOLDS WITH AN ESTIMATED ANNUAL INCOME OF $10,000 OR MORE. FOR EACH HOUSEHOLD MEMBER, THE LIST GENERALLY CONTAINS THEIR NAME, ADDRESS, AGE, AND ESTIMATED ANNUAL INCOME.

ALTHOUGH WE DO NOT KNOW THE SPECIFIC SOURCES OF DATA IN THE COMMERCIAL LIST WE RECEIVED, THE INFORMATION IS A COMBINATION OF SPECIFIC DATA AND ESTIMATES DEVELOPED FROM INFORMATION CONTAINED IN PUBLIC RECORDS. THE SELLER OF THE LIST HAS ADVISED US THAT THE INCOME INFORMATION IN PARTICULAR IS BASED ON SUCH PUBLICLY-AVAILABLE RECORDS AS REAL ESTATE AND AUTOMOBILE REGISTRATIONS, TELEPHONE LISTINGS, AND PUBLISHED CENSUS DATA.

THE COMMERCIAL LIST DATA FOR 1982 WILL BE MATCHED WITH IRS RECORDS OF INDIVIDUALS WHO FILED TAX RETURNS. IN EACH OF FOUR TEST DISTRICTS, ABOUT 1,400 POTENTIAL NONFILERS WILL BE CONTACTED TO ASCERTAIN IF A TAX RETURN IS DUE.

MATCHING NAMES FROM THE COMMERCIAL LIST TO IRS FILES IS CURRENTLY UNDER WAY. A PRETEST TO VALIDATE TEST PROCEDURES BEGAN IN EARLY MAY. IN JULY, A TOTAL SAMPLE OF APPROXIMATELY 5,600 CASES WILL BE SELECTED FROM AMONG THE PEOPLE ON THE LIST IDENTIFIED AS HEADS OF HOUSEHOLDS WHO APPEAR NOT TO HAVE FILED A TAX RETURN FOR 1982 OR WHO CANNOT BE FOUND IN IRS FILES.

THE STUDY IS SCHEDULED FOR COMPLETION IN MAY 1985. IF THE PROCEDURE IS FOUND TO BE EFFECTIVE IN IDENTIFYING NONFILERS, WE PLAN TO USE IT AS AN ONGOING PART OF OUR EFFORTS TO ADDRESS THE PROBLEMS OF NONCOMPLIANCE.

THE MARCH 8, 1984, ISSUE OF THE WALL STREET JOURNAL REPORTED THAT "MARKET RESEARCHERS ARE WORRIED THAT IRS ACTIONS COULD WIND UP MAKING PEOPLE A LOT MORE WARY ABOUT PARTICIPATING IN SURVEYS THAT ASK FOR PERSONAL FINANCIAL INFORMATION." A MAILING LIST INDUSTRY SPOKESMAN STATED "IF PEOPLE GET THE IDEA THAT OUR INFORMATION COULD WIND UP IN ANYONE'S HANDS -- AND PARTICULARLY IN THOSE OF THE IRS -- THEY AREN'T GOING TO COOPERATE." THESE STATEMENTS REFLECT A MISUNDERSTANDING OF WHAT DATA THE SERVICE IS USING TO DETECT NONFILERS. THE IRS IS INTERESTED IN COMPREHENSIVE LISTS OF HOUSEHOLDS, WHICH DO NOT DEPEND ON INDIVIDUAL PARTICIPATION IN SURVEYS, BUT RATHER ARE COMPILED FROM PUBLIC SOURCES, SUCH AS TELEPHONE DIRECTORIES, CITY DIRECTORIES, AUTOMOBILE REGISTRATIONS, AND COURTHOUSE RECORDS OF REAL ESTATE TRANSACTIONS. THE SERVICE IS CHARGED

WITH INQUIRING PERIODICALLY AFTER THE TAXABILITY OF INDIVIDUALS AND TO SECURE RETURNS NOT FILED BY SECTION 7601 OF THE INTERNAL REVENUE CODE, "CANVASS OF DISTRICTS FOR TAXABLE PERSONS AND OBJECTS".

SOME CRITICS OF THIS STUDY ALSO HAVE SUGGESTED THAT THE USE OF COMMERCIAL LISTS IS AN UNWARRANTED INVASION OF PRIVACY. NOTHING COULD BE FURTHER FROM THE FACTS. THIS INFORMATION DIFFERS SUBSTANTIALLY FROM THE TAXPAYER INFORMATION GATHERED PURSUANT TO THE INTERNAL REVENUE CODE. INFORMATION IN COMMERCIAL LISTS IS AVAILABLE IN RAW FORM FROM PUBLIC RECORDS AND DOCUMENTS; PURCHASING IT IN THIS FORM IS MORE EFFICIENT THAN COMPILING IT OURSELVES. MOREOVER, THE LISTS ARE AVAILABLE TO CAR DEALERS, FURNITURE SALESMAN AND NUMEROUS OTHER VENDORS. IF THIS PUBLIC INFORMATION CAN BE USED TO SELL EVERYTHING FROM ALUMINUM SIDING TO MAGAZINE SUBSCRIPTIONS, WHY SHOULDN'T IT BE AVAILABLE TO FIND TAX CHEATS AS WELL?

TRADITIONAL NONFILER AND UNDERREPORTER PROJECTS

IN ADDITION TO COMMERCIAL LISTS, WE ALSO GATHER DATA IN THE NONFILER AND UNDERREPORTER AREAS THROUGH EFFORTS SUCH AS THE FOLLOWING. SOME OF THESE PROGRAMS MAY ALSO ADDRESS ASPECTS OF THE UNDERREPORTER ISSUE AS WELL.

A. DATA TO IDENTIFY NONFILERS AND UNDERREPORTERS HAS BEEN GATHERED ROUTINELY VIA SUCH FORMS AS THE W-2, 1099, ETC., FROM THE PRIVATE SECTOR AND FROM GOVERNMENT SOURCES THROUGH

INFORMATION REPORTING REQUIRED BY LEGISLATION AND REGULATION. OUR INFORMATION RETURNS PROGRAM (IRP), AS YOU MAY KNOW, MATCHES DATA FROM THESE FORMS WITH DATA ON TAXPAYERS' RETURNS, TO VERIFY THAT CORRECT AMOUNTS ARE BEING REPORTED. THE SERVICE WILL MATCH 91% OF THE 1099 INFORMATION RETURNS FOR TAX YEAR 1984.

B. THE SERVICE'S MAJOR COMPLIANCE FUNCTIONS -- EXAMINATION, COLLECTION, AND CRIMINAL INVESTIGATION -- ALL HAVE ONGOING PROGRAMS TO COLLECT DATA NECESSARY TO IDENTIFY NONFILERS OR UNDERREPORTERS OF INCOME.

FOR EXAMPLE, EXAMINATION MIGHT GATHER INFORMATION FROM COUNTY RECORDS TO DETERMINE IF REAL ESTATE SALES AND COMMISSIONS ARE BEING REPORTED. COLLECTION, AS PART OF ITS RETURNS COMPLIANCE PROGRAM, MAY USE LOCAL LICENSING RECORDS AND MOTOR VEHICLE REGISTRATIONS AS SOURCES OF NONFILERS. CRIMINAL INVESTIGATION CONDUCTS INFORMATION GATHERING PROJECTS WHICH ALSO USE THESE SOURCES FOR LEADS ON NONFILERS AND UNDERREPORTERS.

C. THE SERVICE IS ALSO ACTIVE IN THE INTERNATIONAL AREA. THROUGH OUR FOREIGN OPERATIONS DISTRICT, WE ADMINISTER TAX TREATIES IN FORCE BETWEEN THE U.S. AND 34 OTHER COUNTRIES, AS WELL AS NEGOTIATE MUTUAL AGREEMENTS WITH TREATY PARTNERS ON ISSUES OUTSIDE THE SCOPE OF THE TREATIES.

In addition, we are involved with selected treaty partners in simultaneous examinations and industrywide exchanges of information aimed at enhancing international tax compliance. The increasing use of offshore tax havens in abusive tax shelters and in fraudulent schemes necessitates our having access to this type of information.

D. A Federal/State Exchange Program Task Force has recently completed its review of the exchange of information between the Service and State tax agencies. As you may know, IRS has for years cooperated with state taxing authorities through reciprocal contractual arrangements for the exchange of relevant tax information.

The primary focus of this group was on the increased availability of state information to IRS. During the course of this review, the Task Force found that the Service may be able to make better use of State information. In addition, the Task Force found that there may be additional information available from the states which the Service is currently not receiving. However, the Task Force did not identify any large information sources which could give the Service substantial leads on nonfilers and underreporters.

One of the recommendations is for the Service to compile a detailed inventory of available State information. Once such an inventory is available, the Service should pursue development of unreported income projects. The Task Force also recommended that the Service should undertake a study to determine the value of State information as a source of Federal nonfiler leads.

Authorized Disclosures of Taxpayer Information

In a selected number of instances, the IRS shares information for tax administration and other authorized purposes. As noted earlier, disclosure of returns and return information is generally governed by Internal Revenue Code section 6103. The basic rule of this section is that taxpayer information is confidential and may be disclosed only as specifically authorized.

There are a number of provisions in IRC 6103 authorizing the IRS to disclose returns and/or return information to other Federal, State or local government agencies, as well as the Congress. In some instances, the agency is specifically identified by the authorizing subsection. In other instances, the provision does not specify a particular agency, but instead provides for disclosure to agencies for a specific purpose, such as enforcement of Federal nontax criminal laws.

AS A RESULT, THE IRS MAKES A VARIETY OF DISCLOSURES TO GOVERNMENT AGENCIES FOR A VARIETY OF PURPOSES. A SUMMARY LIST OF MAJOR DISCLOSURE PROGRAMS IS INCLUDED AS AN APPENDIX AT THE END OF THIS STATEMENT.

IN ADDITION TO THESE PROVISIONS, IRC 6103(C) AUTHORIZES DISCLOSURES BASED UPON A WRITTEN WAIVER BY THE TAXPAYER. GOVERNMENT AGENCIES SOMETIMES USE THIS PROVISION TO SECURE AN INDIVIDUAL'S AUTHORIZATION TO OBTAIN INFORMATION RELATING TO GOVERNMENT BENEFITS AND ENTITLEMENTS. EXAMPLES INCLUDE VALIDATING CLAIMS OR DETERMINING ELIGIBILITY FOR WORKER'S COMPENSATION, HOSPITALIZATION BENEFITS, ELIGIBILITY OF SURVIVING CHILDREN FOR SOCIAL SECURITY BENEFITS, AND ELIGIBILITY FOR STUDENT LOANS, SUBSIDIZED HOUSING, ENERGY ASSISTANCE AND FOOD STAMPS.

THE PRIVATE SECTOR USES IRC 6103(C) AS WELL TO OBTAIN TAX INFORMATION. FOR EXAMPLE, AN INDIVIDUAL CAN AUTHORIZE THE DISCLOSURE OF TAX INFORMATION TO VALIDATE FINANCIAL STATEMENTS IN CONNECTION WITH APPLICATIONS FOR CONSUMER CREDIT AND MORTGAGES.

CHILD SUPPORT ENFORCEMENT AGENCIES ARE AUTHORIZED UNDER IRC 6103(L)(6) TO OBTAIN CERTAIN RETURN INFORMATION, INCLUDING ADDRESS INFORMATION, IN ORDER TO ESTABLISH AND COLLECT CHILD SUPPORT OBLIGATIONS. ADDRESS INFORMATION IS DISCLOSED TO STATE

AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES THROUGH THE PARENT LOCATOR SERVICE, OFFICE OF CHILD SUPPORT ENFORCMENT, DEPARTMENT OF HEALTH AND HUMAN SERVICES. IN ADDITION, CHILD SUPPORT ENFORCEMENT AGENCIES CAN OBTAIN ADDRESS INFORMATION DIRECTLY FROM THE IRS UNDER IRC 6103(L)(6).

IRC 6103(M)(2) PROVIDES FOR DISCLOSURES OF A TAXPAYER'S MAILING ADDRESS TO OFFICERS AND EMPLOYEES OF A FEDERAL AGENCY PERSONALLY AND DIRECTLY INVOLVED IN, AND SOLELY FOR THE USE IN THE COLLECTION OR COMPROMISE OF, A FEDERAL CLAIM AGAINST SUCH TAXPAYER. IRC 6103(M)(4) PROVIDES FOR LIMITED DISCLOSURE OF THE MAILING ADDRESS OF A TAXPAYER WHO HAS DEFAULTED ON AN EDUCATIONAL LOAN.

UNDER IRC 6103(I)(1), (I)(2), AND (I)(3) ADDRESS INFORMATION, ALONG WITH OTHER INFORMATION, CAN BE DISCLOSED TO FEDERAL AGENCIES FOR THE ENFORCEMENT OF NONTAX FEDERAL CRIMINAL LAWS. UNDER IRC 6103(I)(5), DISCLOSURES OF ADDRESS INFORMATION CAN BE MADE TO LOCATE FUGITIVES FROM JUSTICE.
THE GENERAL ACCOUNTING OFFICE (GAO) CAN RECEIVE RETURN INFORMATION AS A PART OF ITS AUDIT OF THE IRS OR OTHER FEDERAL AGENCIES UNDER IRC 6103(I)(7) OR 6103(F). IN ADDITION, TAXPAYER INFORMATION CAN BE DISCLOSED TO THE CONGRESS UNDER CERTAIN CIRCUMSTANCES.

IRC 6103(M)(3) PROVIDES FOR DISCLOSURE OF A TAXPAYER'S MAILING ADDRESS TO OFFICERS AND EMPLOYEES OF THE NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH (NIOSH) SOLELY FOR LOCATING INDIVIDUALS WHO ARE OR MAY HAVE BEEN EXPOSED TO OCCUPATIONAL HAZARDS TO DETERMINE THE STATUS OF THEIR HEALTH OR TO INFORM THEM OF THE POSSIBLE NEED FOR MEDICAL CARE AND TREATMENT.

LETTER FORWARDING

THE IRS ALSO PERFORMS A LETTER FORWARDING FUNCTION FOR OTHER GOVERNMENT AGENCIES. THE RELEVANT POLICY STATEMENT PROVIDES, IN PART, THAT THE SERVICE MAY AGREE TO FORWARD LETTERS FOR OTHER GOVERNMENT AGENCIES. IN THE CASE OF LARGE VOLUME REQUESTS (OVER 50 LETTERS AT ONE TIME), THE SERVICE WILL FORWARD LETTERS UNDER AN ADVANCE WRITTEN AGREEMENT THAT PROVIDES FOR REIMBURSEMENT, IF THIS SERVICE WOULD NOT DISRUPT TAX ADMINISTRATION FUNCTIONS.

IN RECENT YEARS, THE SERVICE HAS BEEN INVOLVED IN VARIOUS LETTER FORWARDING PROGRAMS. A LIST OF THESE HAS BEEN PROVIDED TO THE SUBCOMMITTEE STAFF. IN EACH OF THE LARGE VOLUME CASES, THE PROGRAM MET OUR POLICY REQUIREMENTS, WAS REIMBURSABLE, AND DID NOT IMPINGE ON ONGOING IRS PROGRAMS. INCLUDED IN THIS LIST ARE EFFORTS FOR THE:

- SELECTIVE SERVICE (NOTIFYING POTENTIAL NON-REGISTRANTS OF THEIR OBLIGATION TO REGISTER FOR THE DRAFT)
- EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (LOCATING INDIVIDUALS INVOLVED IN CLASS ACTION SUITS)
- NATIONAL LABOR RELATIONS BOARD AND THE DEPARTMENT OF LABOR (LOCATING INDIVIDUALS INVOLVED IN BACK PAY CASES, AMONG OTHERS)
- SMALL BUSINESS ADMINISTRATION (LOCATING MEMBERS OF A CLASS ACTION ENTITLED TO REBATES ON LOANS)

THE POLICY MEETS ALL THE LEGAL REQUIREMENTS CONTAINED IN THE DISCLOSURE PROVISIONS OF THE INTERNAL REVENUE CODE AND THE PRIVACY ACT OF 1974. THE OPERATION ITSELF HAS A MINIMAL COST, IS COMPLETELY REIMBURSABLE IN LARGE VOLUME CASES, AND DOES NOT SERIOUSLY DISRUPT TAX ADMINISTRATION PROGRAMS.

INFORMATION SHARING -- A QUESTION OF BALANCE

IN THE SPECIFIC INSTANCES IN WHICH THE GENERAL NON-DISCLOSURE RULE OF SECTION 6103 IS OVERCOME, THE INFORMATION THAT IS SHARED WITH OTHER GOVERNMENT AGENCIES IS CLEARLY OF VALUE TO THOSE AGENCIES AND THEIR PROGRAMS. THE QUESTION REMAINS, HOWEVER -- WHAT, IF ANY, EFFECT HAVE SUCH TRANSFERS OF DATA HAD ON THE TAX SYSTEM? THIS IS A DIFFICULT QUESTION TO WHICH WE HAVE NO DEFINITE ANSWERS AT THIS TIME.

WHILE IT IS CLEAR THAT COMPLIANCE LEVELS IMPROVE WHEN BANKS, EMPLOYERS, AND OTHER PAYORS SHARE DATA WITH THE IRS, WE ARE NOT AWARE OF ANY CONCLUSIVE EVIDENCE THAT SHOWS A DEFINITE RELATIONSHIP BETWEEN VOLUNTARY COMPLIANCE AND OUR SHARING DATA WITH OTHER AGENCIES. AS YOU MAY KNOW, OUR RESEARCH INTO INDIVIDUAL VOLUNTARY COMPLIANCE INDICATES A SLOW BUT STEADY OVERALL DECLINE IN THE PERCENTAGE OF COMPLIANCE IN RECENT YEARS. WE SUSPECT, HOWEVER, THAT FACTORS UNRELATED TO INFORMATION SHARING ARE RESPONSIBLE FOR THIS DECLINE.

ONE THING THAT DOES SEEM CERTAIN IS THAT THE TRANSFER OF INFORMATION BETWEEN GOVERNMENT AGENCIES WILL INCREASE. AS YOU ARE PROBABLY AWARE, BOTH THE HOUSE AND SENATE VERSIONS OF THIS YEAR'S MAJOR TAX BILL, H.R. 4170, PROVIDE FOR IMPLEMENTING THE GRACE COMMISSION RECOMMENDATIONS ON INCOME AND ELIGIBILITY VERIFICATION FOR MEANS-TESTED BENEFITS. UNDER THIS PROVISIONS, WE WOULD MAKE AVAILABLE TO FEDERAL AND STATE AGENCIES DATA ON BOTH EARNED AND UNEARNED INCOME, FOR USE IN ADMINISTERING MEANS-TESTED FEDERAL BENEFIT PROGRAMS. THE DATA WOULD BE PROVIDED SOLELY FOR THE PURPOSE OF VERIFYING ELIGIBILITY FOR THOSE PROGRAMS, AND AGENCIES RECEIVING THE DATA WOULD BE SUBJECT TO ALL EXISTING SAFEGUARDS ON THE UNAUTHORIZED DISCLOSURE OF THE INFORMATION.

I DO NOT BELIEVE ANYONE CAN ARGUE AGAINST THE USE OF TAX INFORMATION TO PREVENT POTENTIAL FRAUD OR ABUSE IN GOVERNMENT BENEFIT PROGRAMS -- TO DO SO WOULD EVENTUALLY COST HONEST

TAXPAYERS MORE THAN THEY ALREADY PAY. ON THE OTHER HAND, WIDE DISSEMINATION OF TAXPAYER INFORMATION MAY DEGRADE VOLUNTARY COMPLIANCE AND TAXPAYER RESPECT FOR THE SYSTEM. EACH TIME THE NON-DISCLOSURE RULE OF SECTION 6103 IS BREACHED IT BECOMES EASIER TO MAKE ADDITIONAL EXCEPTIONS IN THE FUTURE.

AS YOU CAN SEE, THERE ARE SIGNIFICANT COUNTERVAILING PUBLIC POLICY ARGUMENTS ON WHETHER IRS SHOULD SHARE INFORMATION WITH OTHER GOVERNMENTAL ENTITIES. FURTHER, THESE ISSUES GO FAR BEYOND QUESTIONS OF TAX ADMINISTRATION.

SAFEGUARDS ON SHARED DATA

MR. CHAIRMAN, IT'S CLEAR FROM WHAT HAS BEEN SAID SO FAR THAT LARGE AMOUNTS OF INFORMATION ARE BEING TRANSMITTED IN SOCIETY TODAY FOR A NUMBER OF PERFECTLY VALID REASONS. IN OUR CASE, HOWEVER, THE DATA WE SHARE WITH OTHERS MUST BE SAFEGUARDED IN ACCORDANCE WITH STRICT STANDARDS CONTAINED IN CODE SECTION 6103. LET ME NOW DESCRIBE FOR YOU HOW WE ATTEMPT TO INSURE THE PROTECTION OF THE DATA WE DO SHARE.

FROM 1978 TO 1982, THE SERVICE CONDUCTED PERIODIC ON-SITE REVIEWS OF FEDERAL AND STATE AGENCIES WHICH ARE IDENTIFIED IN IRC 6103(P)(4) AS BEING SUBJECT TO THE SAFEGUARD REQUIREMENTS OF THE CODE. AFTER SATISFYING OURSELVES THAT THESE AGENCIES

GENERALLY MET IRS STANDARDS FOR SECURITY AND DISCLOSURE, WE SWITCHED TO A SELF-CERTIFICATION PROGRAM IN 1982. THIS PROGRAM REQUIRES EACH RECIPIENT AGENCY TO SUBMIT AN ANNUAL REPORT AND TO CONDUCT INTERNAL INSPECTIONS OF ITS SAFEGUARDS. THE SERVICE EVALUATES THE ANNUAL REPORTS AND CONDUCTS ON-SITE REVIEWS ON AN AS-NEEDED BASIS.

AN IRS SAFEGUARD REVIEW ENTAILS AN ON-SITE VISIT TO THE AGENCY BY A TEAM OF SPECIALISTS IN THE AREAS OF DISCLOSURE, PHYSICAL SECURITY AND COMPUTER SECURITY. THIS TEAM WILL EMPLOY TECHNIQUES SUCH AS INTERVIEWS, OBSERVING OPERATIONS, TESTS, AND ANALYSIS OF RECORDS WHICH ARE DESIGNED TO DETERMINE THE DEGREE OF COMPLIANCE WITH THE PROVISIONS OF IRC 6103(P)(4). THIS SECTION PROVIDES THAT THE AGENCY SHALL:

A. MAINTAIN A SYSTEM OF RECORDS OF DISCLOSURES,
B. MAINTAIN A SECURE STORAGE AREA FOR STORAGE OF THE TAX DATA,
C. RESTRICT ACCESS TO PERSONS WHOSE DUTIES AND RESPONSIBILITIES REQUIRE ACCESS,
D. PROVIDE OTHER SAFEGUARDS AS REQUIRED (IRS REQUIRES AN ANNUAL REPORT AND INTERNAL INSPECTIONS)
E. SUBMIT A REPORT ON ITS SAFEGUARD PROCEDURES (IRS REQUIRES THIS REPORT WITHIN 30 DAYS OF INITIAL RECEIPT OF DATA),

F. PROPERLY DISPOSE OF THE DATA UPON COMPLETION OF USE.

IF ANY AGENCY FAILS TO PROPERLY SAFEGUARD THE DATA, THE IRS MAY DISCONTINUE MAKING DICLOSURES TO THE AGENCY. IN ADDITION, THE INTERNAL REVENUE CODE PROVIDES CRIMINAL PENALTIES FOR EMPLOYEES WHO WILLFULLY DISCLOSE TAX DATA IN AN UNAUTHORIZED MANNER, AND PROVIDES CIVIL RELIEF IN THE CASE OF WILLFUL OR NEGLIGENT UNAUTHORIZED DISCLOSURES.

FEDERAL AND STATE AGENCIES SPECIFICALLY AUTHORIZED BY THE INTERNAL REVENUE CODE TO RECEIVE INFORMATION FOR "ELIGIBILITY VERIFICATION PURPOSES" CURRENTLY INCLUDE ONLY SOCIAL SECURITY ADMINISTRATION, THE DEPARTMENT OF AGRICULTURE, AND STATE FOOD STAMP AGENCIES. THE RECIPIENTS ARE INCLUDED IN THE SELF-CERTIFICATION PROGRAM WHICH WAS PREVIOUSLY MENTIONED. THE DEPARTMENT OF AGRICULTURE PROMULGATED REGULATIONS (7 CFR, PARTS 272 & 273) WHICH TOOK EFFECT ON JANUARY 1, 1983, AND PROVIDE RULES FOR THE FOOD STAMP PROGRAM. THESE RULES SPECIFY THAT STATE FOOD STAMP AGENCIES WILL PROTECT THIS INFORMATION IN ACCORDANCE WITH IRS PUBLICATION 1075, "TAX INFORMATION SECURITY GUIDELINES FOR FEDERAL, STATE, AND LOCAL AGENCIES." A COPY OF THIS PUBLICATION WAS PROVIDED TO THE STAFF OF THE SUBCOMMITTEE EARLIER.

IN ADDITION TO BEING SUBJECT TO SAFEGUARD REVIEWS BY IRS, THE STATE FOOD STAMP AGENCIES ARE ALSO SUBJECT TO AUDIT BY THE DEPARTMENT OF AGRICULTURE. IT IS OUR UNDERSTANDING THAT SUCH AUDITS MAY INCLUDE A REVIEW OF THE AGENCIES' COMPLIANCE WITH IRS SAFEGUARD REQUIREMENTS.

CONCLUSION

IN MY VIEW, THE MAJOR ISSUE RAISED BY IRS' PARTICIPATION IN PROGRAMS OF THE TYPE CONSIDERED TODAY IS THE NEED FOR BALANCE: THE INTEGRITY OF THE TAX SYSTEM IN GENERAL AND TAXPAYER PRIVACY IN PARTICULAR MUST BE BALANCED AGAINST THE NEED TO PROVIDE EFFICIENT AND EFFECTIVE COOPERATION BETWEEN AGENCIES ON MATTERS OF NATIONAL IMPORTANCE. THAT BALANCE HAS BEEN STRUCK IN OUR DISCLOSURE LAWS, WHERE CONGRESS HAS WEIGHED THE INDIVIDUAL'S EXPECTATION OF FAIRNESS AND PRIVACY AGAINST THE LEGITIMATE NEEDS OF OTHER AGENCIES. UNDER THOSE LAWS, WE ARE PERMITTED TO RELEASE TAX INFORMATION ONLY TO THE EXTENT SPECIFICALLY AUTHORIZED. WE RECOGNIZE THAT OUR UNIQUE VOLUNTARY COMPLIANCE SYSTEM OF SELF-ASSESSMENT DEPENDS NOT ONLY UPON THE MAINTENANCE OF STRICT CONFIDENTIALITY OF TAX INFORMATION; IT ALSO DEPENDS UPON THE PUBLIC'S FAITH IN OUR EFFORTS TO PRESERVE AND DEFEND THE INTEGRITY OF THE DATA WHICH THE PUBLIC PROVIDES TO US. AS A RESULT, WE SCRUPULOUSLY SCREEN EACH REQUEST FOR TAX INFORMATION TO INSURE THAT IT CONFORMS WITH ALL OF THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS ESTABISHED BY CONGRESS.

MY ASSOCIATES AND I WILL BE PLEASED TO TRY AND RESPOND TO ANY QUESTIONS YOU OR THE OTHER MEMBERS MAY HAVE.

MAJOR IRS DISCLOSURE PROGRAMS

PROGRAM	INFORMATION	AUTHORITY	ESTIMATED VOLUME (1983)
FEDERAL/ STATE	RETURNS AND RETURN INFORMATION LIMITED TO CERTAIN IRC CHAPTERS	IRC 6103(D)	77 MILLION
TAX CHECKS	RETURN INFORMATION FOR FEDERAL GOVERNMENT APPOINTEES	IRC 6103(C)	3,900
NONTAX FEDERAL CRIMINAL LAW ENFORCEMENT	RETURNS AND RETURN INFORMATION	IRC 6103(I)(1) (I)(2), AND (I)(3)	58,550
GAO	RETURNS AND RETURN INFORMATION	IRC 6103(I)(7)	7.5 MILLION

PROGRAM	INFORMATION	AUTHORITY	ESTIMATED VOLUME (1983)
CENSUS, BEA, TREASURY FOR STATISTICAL USE	RETURN INFORMATION	IRC 6103(J)	165 MILLION
CHILD SUPPORT ENFORCEMENT	RETURN INFORMATION	IRC 6103(L)(6)	1.6 MILLION
ADDRESS INFORMATION FOR LOCATING INDIVIDUALS	ADDRESSES	IRC 6103(M)(2), (M)(3), (M)(4)	2.3 MILLION

Internal Revenue Service Center

Department of the Treasury

Date:

Person to Contact:

Contact Telephone Number:

Information Copy Only

We can find no record of your filing a 1982 individual income tax return (Form 1040, 1040A, or 1040EZ).

If you are required to file the form, but have not done so, please complete the form and any required schedules, and return it to us within 30 days from the date of this letter.

If you were not required to file an individual income tax return, please explain why on the back of this letter and return it to us.

If you have already filed the return, we apologize for this inquiry. Please give us the information below so we may correct our records:

Name and address as shown on the return

Social security number as shown on the return

Date filed

Office where filed

If tax was paid by check, show the endorsement date and number stamped on the back of the check

An envelope is enclosed for your convenience.

If you have any questions, please contact the person whose name and telephone number appear at the top of this letter. Thank you for your cooperation.

Sincerely yours,

Strip in "Street or P.O. Box, City, State, Zip Code" in bottom left corner (face only) aligned with form number (½" left, ½" bottom margin). (10 pt News Gothic Bold)

Chief, Service Center Collection
Branch.

Enclosures:
Envelope
Notice 609

[Choice of facsimile, hand or stamped signature to be determined by using office. Region will strip in facsimile signature if one is requested.]

Letter 1877(SC) (3-84)

Senator COHEN. Our second witness is the Honorable Donald C. Alexander, who served as Commissioner of the Internal Revenue Service from 1973 until 1977. Mr. Alexander has a wide knowledge of the history leading to the disclosure restrictions based on tax information by the Tax Reform Act of 1976.

We're pleased you could be with us this morning, Mr. Alexander. Feel free to proceed any way you wish.

TESTIMONY OF DONALD C. ALEXANDER, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. ALEXANDER. I have a statement which I prefer not to read, but I request that it be inserted in the record.

Senator COHEN. Without objection.

Mr. ALEXANDER. Mr. Chairman, you mentioned that there were 29 exceptions to the general rule of section 6103, which is that tax information is private and should not be disclosed. I think that's a few too many exceptions. If you look at the provision as written in CCH, you'll find that the general rule takes up about one page. The general rule, enacted in 1976 with great support from the Internal Revenue Service, is that tax returns and return information are confidential. Then you find 24 pages of exceptions. That's a few pages too many.

The Commissioner, of course, has to be a good soldier. I thought he did a masterful job this morning of explaining that there is a need for confidentiality for several reasons, one of which is that it makes the tax system work. He stated that there are good reasons for a number of the exceptions. However, I am not sure there are good reasons for some of them; for instance 6103(m), to which you referred, Mr. Chairman, regarding student loans. I think that what is happening in the further erosion of 6103's privacy thrust in the AFDC and child support area is a good predictor of what is to come if the provisions contained in H.R. 4170, the omnibus tax budget bill, are enacted.

The tax system is carrying too much baggage. It shouldn't carry any more. IRS should not be the Nation's tax collector as well as the Nation's all-purpose debt collector. It can serve in one capacity fairly well. It cannot serve in the other capacity well at all. The further erosion, the revisions that are before you now, should not be enacted, and indeed, they should be rolled back.

Now, speaking as a has-been in the Internal Revenue Service, I can afford, I suppose, to be as irresponsible as I was when I was with the Service. [Laughter.]

Senator COHEN. Were you as candid at that time?

Mr. ALEXANDER. I was, and it got me in trouble every time. If not up here, it got me in trouble downtown. And I thought the Commissioner was doing a very good job this morning of staying out of trouble downtown, while at the same time trying to give you a message up here.

The Internal Revenue Service is different from L.L. Bean, Horchow's or Tiffany's. Let's assume a congressional candidate gets a catalog from L.L. Bean. That's a little bit different from the Internal Revenue Service making third-party contacts in a criminal investigation of that same candidate. So, the Internal Revenue Service has a different responsibility with respect to the third-party information that it gets than does a private organization. I think that should be evident and I don't propose to dwell on it anymore. The Internal Revenue Service also has a duty, as the Commissioner stated so clearly, to try to make our tax system work and try to make sure that those who don't pay their taxes are called upon to pay them.

That's very difficult when someone doesn't file a tax return, and the IRS can't identify that person from materials in its possession, such as W-2's. So the Internal Revenue Service for a long time has grappled in a more or less clumsy way with the problem of nonfilers and how to deal with them.

Now if, as the Commissioner stated this morning, the purpose of acquiring commercial mailing lists that are pretty good, that identify people who have incomes of more than $10,000, is simply to try to match up those people on the list with those on the master file to see whether they are filing returns, then I think that's a pretty worthy purpose. And I would think that the concerns about the use of private mailing lists for that narrow purpose are not really well-founded.

I was delighted to hear the Commissioner say that he had no intent whatever to use those mailing lists not only for the purpose of locating someone who should be paying taxes but is not, but also for the propose of determining how much in the way of taxes that person should pay.

Senator COHEN. How do you maintain the distinction? If you are the Commissioner, how do you maintain that distinction within the IRS itself?

Mr. ALEXANDER. Easy. Because of IRS bureaucracy. You see, collection is different from examination. Exam has the responsibility to determine how much someone should pay. Collection had, and perhaps still has, the responsibility for determining whether someone should be on the master file at all. That was to make sure that collection had enough work for enough people.

Senator COHEN. Does the IRS have computers that talk to each other? Are they separated out physicially, such as if you're on one floor, you're in examination and if you're on another, you're in collection?

Mr. ALEXANDER. That's right. You pick a number for examination, another number for collection. There is a fairly easy way—I'm being somewhat sarcastic and overly simplistic in my reply to a very good question—but IRS can distinguish very easily through bureaucratic methods, and if it does, it will refrain from going further.

The mailing list issue, I think, is not nearly as troublesome as the other issues that confront you at this time in the privacy area. Regarding the IRS use of private mailing lists, as you pointed out so clearly, if the IRS simply picks up any mailing list designed to give a picture of someone's lifestyle and decides that having determined that person's lifestyle, it can then determine that person's income, there would be real problems. I hope we don't get to that. However, I don't think we will, because IRS does not have enough people to do the job anyway. IRS is not auditing enough returns as it is, and the information generated by these mailing lists is largely garbage, as the Commissioner stated. So unless the IRS budget is vastly increased or tax shelters suddenly dry up, I don't think we need to worry about that possibility, for bureaucratic reasons.

Senator COHEN. As the computers become more sophisticated, can't you do it more and more by computer alone without manpower?

Mr. ALEXANDER. You can and that's going to produce lots of errors. The Commissioner mentioned, I believe, that many errors are corrected before the taxpayer is ever contacted. Many are not. And the more that computers are substituted for people, the more errors are going to be made and the more communication problems are going to exist.

Senator COHEN. Let me give you an example with respect to the New York Times story about the IRS in Texas trying to tap into the records of 80 counties. Isn't that an example of using the computer instead of sending people out to do the investigation? You are going to have access through a computer terminal?

Mr. ALEXANDER. That one gives me all sorts of problems. First, if someone were to rely on that information, thinking that information is fully reliable within the IRS, I believe that's problem A. Problem B—if one computer has access to another I thought, in my simplistic way, that the other computer would have access to the first. And the more that computers access each other, the more we have problems with the hackers that you talked about earlier—break-ins by unauthorized people—the more that we have problems of maintaining security in what is a very insecure area in the first place.

While I am on that point, I believe that it's necessary that GAO play a prominent role in checking to make sure that all the promises that IRS makes—Commissioner Egger makes them, I made them, and one tries to carry them out—that those promises are carried out. This is too important an issue to let the IRS be the judge of its own performance.

Senator COHEN. I come back to the same question. Is that something that should be an internal policy on the part of the IRS or should there be either guidelines or regulations issued? In other words, how do you keep the distinction? Should it be done simply because the IRS Commissioner is law-abiding, upright and wants to maintain sensitivity to privacy needs? Is that something we should allow to rest within the Commissioner's discretion or should it be something written into regulatory form?

Mr. ALEXANDER. I think it at least should be set forth in the manual, but for two reasons it would be better to set it forth in published procedures for two reasons. First is uniformity. The IRS has a constant problem with little fiefdoms: District A does one thing that it thinks is good and, district B does another. You've already touched on the variances in the various State interchange programs.

The second reason is to curb the overzealous. There is nothing like a publication in the light of day to accomplish that particular goal.

Now, turning back to one thing that I touched on earlier, the Grace Commission recommendations seem to assume that further erosions of taxpayer privacy will not have any adverse affect on taxpayer compliance. Commissioner Egger told you this morning about the decline in taxpayer compliance. He pointed out, quite correctly, that it is very difficult, if not impossible, to attribute that decline to any particular factor. But then let's turn to a specific attribute that you and Commissioner Egger touched on, and that is the study that you mentioned.

If people know that their tax refunds are going to be stopped on the basis of a claim that they owe a debt to another Federal agency, which claim they might be disputing, or if they know that their tax returns are going to be given to other Federal agencies with which they regularly deal, sometimes in a wholly nonadversary capacity, an easy way to prevent the problem from arising in the future is to not file a tax return in one case, or in another case to not have a refund.

Now the Internal Revenue Service processing system and much of the Treasury's fiscal system depends upon most taxpayers being overwithheld. If we tell taxpayers that over withholding is at their own risk, for a reason unrelated to taxes, then we would give them a strong suggestion that they should be underwithheld. That creates problems not only for the Service but also for the Treasury.

I think, Mr. Chairman, that I've covered most of the points I made in my submission. I was interested in your Tiffany's example. I mentioned that in my submission, and pointed out, with regard to Tiffany's, that the second floor is about the only floor, Mr. Chairman, where an underpaid person in Washington could go. But even if you go to the second floor, you will get on their mailing list.

Senator COHEN. I never got beyond looking in the window.

What kind of abuses led to these restrictions that we placed in the law in 1976?

Mr. ALEXANDER. Perceived and actual. There were abuses of the old rule and, under the old rule privacy was turned on its head. Tax returns were public information, except as otherwise determined by Executive order.

The Internal Revenue Service was accused of being a lending library, and indeed, it was to some extent. Some of the abuses were real because information was made public which should not have been made public. Some were political. Some were imaginary.

The fact of the existence of bad examples, real or imaginary, and the concerns about taxpayer privacy which were prevelant in the Watergate era, as you recall so well, led to a basic and important change in 1976 which has been eroded quite a bit since then. Now it's time to try to reverse that erosion.

Senator COHEN. In your written testimony you indicated that the IRS could utilize random methods of identifying nonfilers such as conducting door-to-door surveys or matching taxpayer rolls against telephone directories. Commissioner Egger also made reference to that. But the question I have is whether you believe that a door-to-door search for nonfilers would raise objections by taxpayers that the IRS was somehow becoming too intrusive in their lives?

Mr. ALEXANDER. I certainly do. I think IRS tried this once in Illinois back in the 1930's. The IRS followed the Internal Revenue Code literally and had a whole host of IRS people marching up the street and knocking on doors. That met with considerable resistance and I don't believe it's been tried since. [Laughter.]

Senator **Cohen**. Do you find it any less objectionable that the IRS can do the same thing by punching computer terminals?

Mr. **Alexander**. Yes. I think that's considerably less objectionable.

Senator **Cohen**. From a privacy point of view?

Mr. **Alexander**. Not nearly as intrusive from the privacy standpoint. Also, if done correctly, it's considerably more effective from the IRS standpoint.

Senator **Cohen**. It's a more effective invasion of the right of privacy?

Mr. **Alexander**. More effective administration of the tax laws. And you are quite right to the extent that administering the tax law, as you pointed out, does involve an invasion of privacy. A more effective invasion.

Senator **Cohen**. Do you think we should draw any distinction between the degree of confidentiality of the information collected by the IRS for tax purposes and the third party mailing lists? Should they all be treated with the same degree of confidentiality?

Mr. **Alexander**. No. There should be a distinction. There should be at least two levels, perhaps three. Now, the highest degree of confidentiality is deserved by what the taxpayer furnishes voluntarily, that is the taxpayer's tax return. The second highest degree is for what the Internal Revenue Service collects from other sources, W-2's, 1099's, third party information, information returns relating to the taxpayer, and information that's available generally. Mailing lists are sold very frequently in the United States. They are rented actually, rather than sold. And information is supplied to credit bureaus and the like. That's deserving of a lower degree of confidentiality.

Senator **Cohen**. I think you mentioned before, however, that it's a little bit different when you pick up the phone and say it's the IRS calling.

Mr. **Alexander**. Oh, yes, it is.

Senator **Cohen**. To the extent that this information, whether it is garbage or not, is funneled into the IRS, and the IRS then funnels it back to State agencies, it still has the imprimatur of the IRS on it.

Mr. **Alexander**. Yes, that's a problem in that the third category can become the second category if it has the IRS stamp of approval on it. So, if the IRS is using, say, the L.L. Bean catalog and giving that to the New York State Department of Revenue, then the IRS has the duty to be extremely careful with that information. I would hope that would happen. I would hope that the IRS would not upgrade information of somewhat doubtful validity and then give it to a State tax department as IRS information.

Senator **Cohen**. You mentioned before that changes in the tax codes came about in 1976 because of either real or perceived threats. I guess the question is whether that still holds true today? For example, if the IRS were suddenly collecting a lot of information from sources beyond the tax return, does the threat to the American people, be it real or imaginary, really make any difference as long as they think that they've got a "Big Brother" that is emerging in Washington in terms of their compliance or noncompliance? In other words, IRS may be acting totally properly, yet the collection of all this information coming into a centralized source may appear as a real or an imaginary threat. Nonetheless, it's still perceived as a threat which will have, I think, profound consequences on the voluntary nature of taxpayer compliance.

Mr. ALEXANDER. It can, and I think the perception is far more than the reality. I think IRS does its difficult job very well and conducts itself in a sensible and totally nonpartisan way. It's very difficult to continue to do that and I have much concern that history may repeat itself if we further destroy the prohibitions and the present limitations on the use of IRS as a lending library. Then we are almost assuring that history will repeat itself and we'll have to start over again. I hope we don't.

Senator COHEN. How many of those 29 would you advocate that we repeal?

Mr. ALEXANDER. I'd start by repealing (m). Then I'd like to work through the rest of the alphabet, leaving about five of them which I think are really justified. We talked this over in 1976 and ended up with quite a list. We had to try to please everybody in sight. I would be glad to send you a schedule of the worst offenders, as I see them, Mr. Chairman.[1]

Senator COHEN. If you would, prior to the conference beginning its markup, that would be helpful.

Mr. ALEXANDER. I will, sir.

Senator COHEN. Thank you very much, Mr. Alexander.

[Mr. Alexander's prepared statement follows:]

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[1] See p. 221.

STATEMENT OF
DONALD C. ALEXANDER

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENTAL MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
U. S. SENATE

CONCERNING

DISCLOSURE OF TAX INFORMATION

JUNE 6, 1984

My name is Donald C. Alexander and I welcome the opportunity to testify before the Subcommittee in my personal capacity on the very important issue of sharing of information among IRS, other federal agencies, and the private sector. My testimony will address in turn the twin aspects of this question: The use of IRS information for nontax purposes and the use by IRS of information from private sector sources for purposes of tax administration. A further issue of current concern is whether IRS should be authorized to deduct amounts due on federal debt obligations from taxpayer refund checks.

IRS Disclosure of Taxpayer Information

As Commissioner of Internal Revenue from 1973 to 1977, it was my responsibility to attempt to administer the vague, loose and contradictory provisions of the Internal Revenue Code governing the disclosure of taxpayer information by IRS, in effect prior to the Tax Reform Act of 1976, and to implement the new tighter standards enacted in 1976. Under pre-1976 law, income tax returns were described as "public records", but at the same time were open to public inspection only under regulations approved by the President or by Presidential Order. In the absence of specific statutory standards for disclosure, federal agencies, standing committees of Congress and the White House often had virtually unfettered access to tax information, and the IRS was at risk of becoming the central information clearinghouse for the federal government. In its general explanation of the Tax Reform Act of 1976, the Joint Committee on Taxation reported that information regarding millions of taxpayers was disclosed to nontax federal agencies annually. General Explanation of the Tax Reform Act of 1976, *reprinted in* 1976-3 C.B. Vol. 2, p. 314.

The ease of access to IRS data made it questionable whether adequate consideration was given by nontax federal agencies to the possibility of obtaining necessary information from other sources. Moreover, it could not be assumed that tax information was always put to legitimate use, and, in fact, one of the deepest concerns of the Watergate era was fear of misuse of income tax returns for political purposes.

The 1976 amendments to section 6103 of the Code reflected a long overdue reassessment of the fundamental premise that tax information should be treated as public records. By replacing the presumption of accessibility of tax information with a presumption of confidentiality and disclosure only under specific circumstances, the amendments were intended to achieve a balance between the competing objectives of preservation of taxpayer privacy on the one hand and access to information necessary to accomplish legitimate agency enforcement objectives on the other. I believe that existing section 6103, while not perfect, fairly achieves that balance, and that any further erosion of section 6103 should be approached with great caution.

Of immediate concern are proposals currently pending before Congress to carve out further exceptions to the general rule of nondisclosure, in addition to the existing exceptions for disclosure to State tax officials, to State audit agencies, to Congressional committees, to Federal agencies for purposes of tax administration, and to nontax federal agencies for use in criminal investigations, among others. Both the House and the Senate versions of H.R. 4170 contain proposed amendments to section 6103 intended to implement certain recommendations of the Grace Commission. Under the House bill, IRS and the Social Security Administration would be authorized to disclose information regarding unearned income and employment tax information to Federal, state and local officials for purposes of determining eligibility for benefits under the AFDC, Medicaid, Supplemental Security Income and Food Stamps programs. *See* Sec. 621 of H.R. 5394, passed by the House April 12, 1984, and incorporated into H.R. 4170. The Senate bill contains similar provisions and also provides for disclosure of tax information for use in State medically needy and unemployment compensation programs. *See* Sec. 991 of H.R. 4170, passed by the Senate May 17, 1984.

Insofar as IRS wage information is currently available to State welfare agencies and the Social Security Administration for use in administering the AFDC, Food Stamps and SSI programs, the proposed amendments may be viewed as a logical extension of current law. Nonetheless, the proposals raise several concerns. First, I believe careful consideration needs to be given to the question whether the benefit of making further exceptions to section 6103 justifies its cost, in view of the danger that exceptions may eventually eat up the general rule of nondisclosure.

Moreover, one cannot help but think that further relaxation of confidentiality strictures will discourage taxpayers from filing accurate returns, or even from filing at all. Thus, the effort to curb one form of fraud might only succeed in encouraging another.

A further concern is whether the proposals would work as intended. State and local governments have generally been permitted to receive federal tax information only for tax purposes and the proposed amendments represent a departure from this limitation. Under the House and Senate proposals, protective measures against further disclosure would be required to be adopted, similar to the current requirements for disclosure to state and local governments for tax purposes. However, it should be remembered that restrictions against disclosure to state and local governments for nontax purposes resulted, in part, from a finding that state and local governments did not maintain appropriate safeguards on confidentiality and may have sought access to taxpayer information for political or other purposes. See General Explanation, 1976-3 C.B. Vol. 2 at p. 332. Moreover, incidents of unauthorized tapping of computer data banks have been reported with alarming frequency, which raises the question whether the safeguards contemplated by the proposed legislation would be adequate to prevent redisclosure. Unless these concerns have been laid to rest, one wonders whether the proposed legislation would adequately vindicate legitimate privacy interests.

IRS Use of Private Sector Information

IRS's recent acquisition of a commercial mailing list showing households with estimated income in excess of $10,000 has been denounced by some as the beginning of the end of privacy in this country. However, on the basis of published descriptions of the pilot nonfiler detection program of which the acquisition was a part, I believe that this is an overreaction.

IRS is not only authorized, but is obligated by statute to take action to ensure taxpayer compliance, and therefore methods must be devised and implemented to seek out those who should be, but are not, filing tax returns. Improved information return reporting and expanded capability to process such data is quite helpful, and should be IRS' primary thrust. However, supplements are advisable.

IRS could conduct, and in fact has at least once conducted, a door-to-door survey in search of nonfilers. IRS could also match taxpayer rolls against phone books nationwide. In addition to being prohibitively expensive, however, such random methods would be as likely to turn up individuals who are not required to file as individuals engaged in tax evasion. What IRS needs are methods that permit it to target nonfiler detection efforts to nonfilers with actual tax liability.

The focus of discussion of the mailing list IRS recently purchased should be whether the list is likely to further this objective. Based on published reports, the list IRS obtained was compiled from motor vehicles registration records, property tax assessment records and census tract information, all of which is public information. Assuming this is the case, all IRS has done is to draw on the technical expertise of the private sector in lieu of preparing its own compilation. The critical inquiry is whether the criteria adopted to prepare the list were adequate to determine household income with reasonable accuracy. I do not believe that IRS has acted unreasonably in relying on the expertise of the private sector in determining the adequacy of these factors, nor in assuming that any nonfilers in a group of households with estimated income in excess of $10,000 should be approached for an explanation. In short, it would not appear that the use of mailing lists for the sole purpose of detecting nonfilers should be cause for concern.

This is not to say, however, that this method would be appropriate for purposes of determining underreporting of income. Even though lists purport to reflect estimated household income, it may not be reasonable to assume that variations between the income level reflected in the list and that reported by the taxpayer justify an examination. Other types of commercial mailing lists should be approached with even greater caution. Often lists are compiled by businesses on the basis of customer transactions, with the result that, for example, a one-time visit to Tiffany's second floor might cause an individual with gross income not in excess of the zero bracket amount to appear on Tiffany's mailing list. In light of this possibility, any assumptions regarding tax liability may be highly suspect, and therefore the use of such lists to target returns for examination would be inadvisable.

Collection of Nontax Federal Debts from Taxpayer Refunds

Beginning with tax returns filed in 1982, IRS has been required under certain circumstances to withhold delinquent spousal and child support payments from tax refund checks. A provision of the Senate version of H.R. 4170 would extend refund withholding to all legally enforceable debts owed the federal government, except for overpayments of Social Security benefits.

However laudable the objective, I believe that this proposal to cast IRS in the role of national debt collector is extremely ill-advised. In addition to adding another element to the already enormous task of returns and refunds processing, a forced collection system might tend to encourage underreporting or nonfiling as a means of escape. There has been a tendency over the years to use IRS for purposes unrelated to its mandate -- administration of the tax laws and collection of the revenues -- and adoption of this proposal would be a further step in the wrong direction.

Senator **Cohen**. Next we are going to hear from a panel of witnesses consisting of Ronald Plesser, representing the American Civil Liberties Union; and Bruce Fried, a staff attorney for the National Senior Citizens Law Center. I should point out that Mr. Plesser also served as general counsel for the Privacy Protection Study Commission and has extensive knowledge of the Privacy Act of 1974 and the Freedom of Information Act. Mr. Fried represented a group of SSI beneficiaries in the case against the Social Security Administration to prevent the disclosure of tax information.

Mr. Plesser, I'll be happy to begin with you.

TESTIMONY OF RONALD L. PLESSER, PARTNER, LAW FIRM OF BLUM, NASH & RAILSBACK, REPRESENTING THE AMERICAN CIVIL LIBERTIES UNION; AND BRUCE M. FRIED, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Mr. **Plesser**. Good morning, Senator Cohen. It's a pleasure to be back here. Last time I was representing myself; this time I'm representing the American Civil Liberties Union.

I had an experience in the last couple of months I think might put some of this in a little bit of perspective. I had the great fortune of being at an international conference on privacy in Italy sponsored by the Ford and Rockefeller Foundations. I was also given the further honor of running one of the afternoon sessions.

We were going to run a session on matching, and asked Bob Smith of the Privacy Journal to make a presentation on computer matching in the United States. Bob made his presentation of our concerns with matching.

There was a Norwegian professor, Professor Semmler, who is one of the major figures in their privacy program. I asked Professor Semmler also to make a presentation of matching in Norway and I was expecting also a great deal of concern from him. He came up to the chalkboard, and started to do this really elegant diagram of how all the information in the Norwegian system from taxes to auto registration to school registration, everything is tied together and matched. He said this with a great deal of pride to all of us who were really pretty chagrined and horrified by it.

Then Bob Smith had to come up and talk about our deep concerns with matching. When we finally got through this discussion, the difference was that tax return information was public information in Norway. It isn't in our country. And so we started from a base that he, believing that matching was a terribly appropriate kind of concept but based on something that is a concept that's alien to ours. I think it really focused on the concern that I have with matching and with the use of IRS data.

When we did the Privacy Commission Report in 1977, we said beware of the slippery slope. Well, after this morning, I think we feel we're pretty close to the bottom.

Justifications, just one after another, in terms of what information can be collected and what information can be used. There was one statement that Mr. Egger stated which I think was very important. He said, of course we won't go into banks and collect this information, but we will get it from public lists.

Why won't he get it from banks? He won't get it from banks, because one of the provisions that Mr. Alexander was able to get passed in 1976 prohibited IRS agents from getting information from banks without warrants. This, of course, had come from a whole history of the IRS using intelligence activities, groups with the names of SS and other kinds of intelligence-gathering activities. The 1976 law came along to try to control it. Now I do think we see an erosion. I think the banking example is crucial. They don't collect it from banks, because there's a law that they can't, and Mr. Alexander again said that IRS should not be the judge of its own performance. I and the ACLU agree with that.

We look at some of the other issues that are in front of this committee, and we say, what is the law? What is the control on IRS? Their good will is fine, but what are the outside controls? Bank records? There's a section of the IRS Code that says bank records can't be obtained without warrant procedures, but if we look at the other aspects, we see that there are no controls.

On the mailing list issue, there are some very fundamental problems. One of the problems is that we believe that there is a basic concept of privacy, that information collected should be used for the purposes for which it's collected. Obviously, the reason that the mailing list people collect that information is not to turn it over to the IRS to find out underfilers or nonfilers.

We think there is a basic violation in the expectation of what the individual has when you subscribe to L.L. Bean. You have no idea that that information may be used. That is a basic privacy principle.

I'm very concerned that the IRS claims that the mailing lists are from general source information. Their whole defense is that these are all public records. Well, if we read his letter it says, "We do not know the sources from which Dunhill"—which was the particular list company they purchased the list from in Washington—"or their suppliers developed the list which we received. We do not know the source from which Dunhill of Washington or their suppliers developed the list which we received.

"Generally, list companies develop their lines from information contained in public records."

The Commissioner is, in my lawyer's mind, backing off from saying that this is from public list information. Not that collection of public records would be all right, and not that the ACLU is going to say that that's all right, but it's not even that narrow. It's obviously a lot broader, and I think, frankly, it's really shocking that the IRS would contract with mailing list people without some assurance from where the information came from. Perhaps the witness after us can comment on it, but to say a list broker can't do that, I think is just not right. I think a list broker absolutely can tell you where lists came from with a great deal of precision, because that's how they value, price and market their lists.

Second, the authority that the IRS is claiming to use private sector mailing lists is so broad that I think anything could be justified under those sections. Pursuant to section 7601(A):

> The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed from time to time through each Internal Revenue District and inquire after and concerning all persons therein who

may be liable to pay any Internal Revenue tax and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

That authority certainly is not limited to gathering information from general lists. That authority certainly does not limit their activities to just identifying nonfilers. There is no question in my mind, at least, legally, that they could use the same kind of mailing lists that they are now collecting to identify underfilers. And I think the concern about the administrative burden is really an incorrect one.

And this gets us to the issue of technology. The concept is that when you've got to match 150 million files, they are not going to do profiles. Of course, that would be very difficult to do, but there is a science of demographics. There is a science of matching demographics with certain key pieces of information. Car ownership is very important, where you live very important, how long you've lived in a certain house. And I think they would very easily be able to create profiles, not from hypothetical information, but from some of the real information and checking it against tax returns. I don't think we're nearly as far away from the kinds of profiling dangers that the Commissioner suggests.

Far more important is the question, is that there simply is no control. There's no standard.

The second issue, I think, that is of most concern to this subcommittee, is the current legislation in which the IRS is given the right to disseminate with a little bit more freedom to other Federal agencies and to the State and local governments, income or other earned income data received from W-2 forms. I really have a sense of deja vu about this, because the last time we testified here, we talked about the *Miller* case and the problem that the fourth amendment is being eroded in connection with information in the hands of a third party.

At this time, I guess I can't blame the IRS, I can blame the Congress. I think Congress is going down the wrong track, in terms of just saying, "if we don't get the data directly from the individual, then we shouldn't have to worry as much about the personal privacy of the individual." I think that that's halfway down the slippery slope, because it is just inconceivable that much data about any of us, in the information age, is going to be maintained by us personally. It's just not going to happen.

All information about us is going to be maintained by third parties, everything—medical records, bank records, insurance records, anything you have. There's really nothing that you would maintain yourself that wouldn't be maintained by a third party. So IRS and Congress are saying, if we can get it from the third party, then we don't worry about the individual.

I think that's dangerous. I think it's going to erode the confidence that people have in the tax system, and I think it's going to create a real concern among individuals that the kind of networking—the kind of network capacity which everybody says is not possible—is likely to occur.

I think that what the ACLU and I have been discussing for several years now is really to follow up on what the Privacy Commission recommended in 1976. That, at least, is a starting point to this inquiry, that some Federal entity be established to study these issues.

Don Alexander said, "IRS should not be the judge of its own performance." Who is going to be the judge of its performance? OMB? OMB is not really in a very good position, because their job is fraud and abuse. GAO has very limited resources. Perhaps if it was made a priority, but they have a lot of other priorities.

Who is going to do these studies? Who's going to make judgments and decisions about them? Right now there's simply nobody in the executive branch of Government prepared to do that.

As I said 1½ years ago, and I repeat today, I think that the biggest need that I see is for there to be even a small group of people in the executive branch or in an independent agency to study and keep abreast of these issues, so that at least we know if we're going down the slope. And maybe there are some ways to stop it.

Thank you.

Senator COHEN. Thank you very much, Mr. Plesser.

I think there is some misunderstanding about what the right of privacy is all about. I think the notion that was suggested here today is that if you're not intrusive, if you are not physically intrusive, you haven't violated anybody's right of privacy. But the right of privacy, it seems to me, is not how information is being collected, but the fact that information is being collected. That distinction doesn't seem to be being drawn. They're saying that if you do not know about it, your privacy really has not been invaded. It is only when we send people in trench coats and large-brimmed hats inquiring down the street about your finances, that there is an invasion of privacy.

And that is not true. The invasion of privacy comes when the information itself is disclosed, whether it be by computer or by physical investigation.

Mr. PLESSER. I think that's absolutely true. I think intrusion is part of it, but a far more important part of it is the relationship of the individual to the institution. That's what I think we did at the Privacy Commission, is develop that concept. And it's the information that really counts, not necessarily how it's broken into.

Senator COHEN. Mr. Fried.

Mr. FRIED. Thank you, Mr. Chairman. My name is Bruce Fried. I'm an attorney with the National Senior Citizens Law Center. We appreciate the invitation to appear before you today and share our experience with the committee.

I'll be focusing mostly on that portion of the tax bill's provision that would allow the Service to disclose to Federal and State agencies that administer means test programs, information relating to the income and unearned income of applicants and recipients of certain benefits.

Our experience in this area comes from two sources. One is our own experience as attorneys for some 4 million SSI recipients across the country who were required, by the Social Security Administration, to allow the disclosure of their confidential tax information or have their SSI, their supplemental security income, benefits affected, whatever that meant.

The other source of our experience is from our working with local legal aid programs across the country, and particularly those in the State of Massachusetts. That State has been using a bank match program to obtain financial information, information very similar to that which would be available from the Internal Revenue Service, for purposes of verifying eligibility for Massachusetts' means-tested benefits.

Let me first tell you a little bit about the litigation that we were involved in.

Back in May 1982, SSI recipients, current and former, across the country, received an unusual form from the Social Security Administration that essentially told them that, if they did not sign this form allowing the Internal Revenue Service to disclose to the Social Security Administration certain confidential information, their SSI benefits may be affected.

As you know, Mr. Chairman, SSI [supplemental security income] is a subsistence income program for the poorest of our citizens, people who are aged, blind, and severely disabled, and who really have nothing else to survive on. Any threat that those individuals' SSI income might be affected could only be coercive. Indeed, we think millions of SSI recipients had exactly that response.

Senator Cohen. What was their reaction? Did they know their benefits would be terminated?

Mr. Fried. The form itself uses the phrase "affected." We were able to obtain documents within SSA that really revealed that they would be terminated or have their benefits suspended. Then at some point in the future, if they could prove there was a reason why they should not be required to disclose their tax information, they would be reinstated. But they would have no income for some months.

For the actual clients that I represented, we obtained very compelling affidavits, testifying as to how frightening this was. Some of the recipients were parents of severely disabled children who would have nowhere else to go to provide for their income and security.

In any case, having been contacted by people from throughout the country, we commenced litigation on their behalf. Unfortunately, the court found that there was a jurisdictional problem and the case was ultimately dismissed. Shortly thereafter, we found that the Social Security Administration had requested the Internal Revenue Service to disclose information for about 3 million SSI recipients.

Twice I personally wrote to Commissioner Egger asking him what policy the Internal Revenue Service intended to pursue. Whether they intended to protect the confidentiality of these taxpayers or not. I never received a response. Ultimately, in order to protect my clients, we filed suit asking the court to require the Internal Revenue Service to afford our clients the confidentiality protections that all taxpayers are entitled to. For a number of reasons, the district court found this lawsuit was jurisdictionally wanting, and otherwise ruled against us.

We appealed both of those cases and, in a consolidated ruling, the court of appeals for the District of Columbia issued a decision that reversed the case against the Internal Revenue Service.

In part, the court of appeals observed that:

> The form used in this case makes a mockery of the consent requirement [of the Internal Revenue Code]. The form itself contained poorly veiled threats that recipients' benefits would be terminated if they failed to sign the forms. . . . The language of the form was thus likely to coerce individuals who depended on Social Security for their subsistence into giving up their right to confidentiality.[1]

I should note that the court also went on to say that if Congress felt it was necessary and appropriate to amend the confidentiality provisions of the Code, to allow the disclosure of this information, that would be within Congress' prerogative—barring constitutional difficulties.

The concern that came to our mind in this case was that the Social Security Administration would be so willing to use such a coercive and threatening approach to obtaining information that they were otherwise prohibited from obtaining. If the Social Security Administration is going to employ those kinds of tactics, one wonders what we can expect to find when other Federal and State agencies are going to be going after people in the name of fraud, abuse, and waste.

The other concern—an equal, perhaps greater, concern—was that the Internal Revenue Service was not willing to, on its own, refuse to respond to a coercive notice. The fact that it was necessary for SSI recipients to proceed with this through litigation, through several steps of the court system, before their confidentiality rights were ultimately protected, raises real concerns about the scope of confidentiality and how willing the Service is to extend the confidentiality measures, as Congress has mandated.

The Massachusetts situation also presents a range of concerns that we think require attention from Congress if Congress is going to allow this information to be disclosed. As I said, Massachusetts has a program that's been in place for a couple of years now in which banks disclose certain information concerning people who are receiving certain benefits from the State. That information, once disclosed, has been used to create a presumption against the individual. Essentially we found that a "guilty until proven innocent" presumption was created in many situations.

Some of those situations were where recipients are listed on bank accounts simply as a matter of convenience. The recipient of the welfare benefit had no access to the funds, it was not their money, and, yet, to guard against unforeseen circumstances, they are listed on the bank account. This is typically a situation where an elderly parent lists a disabled younger child on the bank account in case the parent dies or the child needs to be institutionalized or hospitalized would have quick access to the parents' funds to take care of funeral or medical expenses for the parent.

Similarly, we've seen situations in the Massachusetts case where nonwelfare recipients, in order to avoid tax consequences, have provided false social security numbers to financial institutions. That way there is never an accurate reporting of interest paid or other dividends. On occasion, those social security numbers have turned out to be the social security numbers of welfare recipients who the State presumed had unreported income.

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[1] *Tierney* v. *Schweiker,* 718 F.2d 449 (1983).

Another situation we found was simply clerical errors by financial institutions. Simply striking a wrong digit in reporting a social security number may be enough to presume fraud by a welfare recipient.

Last, a point that you yourself made is that there is frequently a significant time delay between the reporting of information and the receipt of that information by the Internal Revenue Service or the welfare agency that will be looking at eligibility.

All of these concerns suggest to us several safeguards that need to be built into whatever Congress adopts allowing the Internal Revenue Service to disclose tax information to the State and local welfare agencies.

Both the House and Senate tax bills contain various protections to insure that agencies, which receive the Internal Revenue Service information regarding a person's unearned income, assure that the information is both relevant and accurate before it's relied on. The House bill contains two provisions that we think are better than those contained in the Senate bill. First, the House bill requires verification before the agency can act to reduce, suspend, terminate, or deny benefits. The Senate version only requires verification before benefits are terminated or decreased. The Senate language, therefore, leaves initial applicants at the whim of the agency on the issue of independent verification. Similarly the House bill specifies that verification must include: (1) verification of the exact amount of the asset or income involved; (2) an evaluation of whether such individual actually has access to such asset or income for his or her own use; and (3) a determination regarding the period or periods when the individual actually has such asset or income. The Senate bill only requires that the Internal Revenue Service information be independently verified.

If the Senate language is adopted it is likely that the verification will be accomplished by a computer match of the bank records, which is often the very record which provided the Internal Revenue Service with the information being relied on. Having an opportunity to verify the information independently, by directly contacting the person who is thought to have the excess income or asset, would allow for an explanation to be provided that would be more reliable than another computer.

Finally, the Senate bill does contain a very helpful provision that's better than that in the House bill. It requires that, at least in termination or reduction cases, before the action can be taken, the agency must provide notice to the individual of the planned action and give that individual an opportunity to review such information. This seems to assure fundamental fairness and due process and would operate against the kind of guilty until proven innocent problems that we've seen.

Thank you, Mr. Chairman.

Senator COHEN. Thank you very much, Mr. Fried. Mr. Plesser, just a couple of quick questions.

I assume that the ACLU probably is totally opposed to computer matching. But assuming that computer matching is going to occur now and into the future, have you developed any guidelines—statutory guidelines—that you would recommend for our consideration?

Mr. PLESSER. I think that when John Shattuck testified here a while ago, not only did the ACLU object to computer matching but I think there was one paragraph that I must read in which he says Congress should not authorize computer matches of sensitive personal record systems.[1] The confidentiality of which is otherwise protected by statute, such as taxpayer records maintained by the Internal Revenue Service, census records maintained by the Census Bureau, or bank records maintained by federally insured banking institutions. So, speaking for the ACLU, I think their position is really quite clear, which is that, at least when you are talking about matches involved with IRS, that they should not be allowed.

Getting to your question, if there are matches, what kinds of protections are there? I think the kinds of protections that this subcommittee has sought to get in the legislation is appropriate. In addition, there has to be an accountability mechanism. These things are simply not self-enforcing.

The problem we had with the Privacy Act and continue to have with the Privacy Act is not simply that it doesn't work, which is part of the problem. The other problem is that there is no way to enforce it. The enforcing mechanism is an individual bringing a lawsuit which is not very effective. There are some exceptions, but there needs to be somebody in Government to enforce these statutes. There needs to be somebody whose job it is and who is to be accountable for watching and representing the privacy interests.

This kind of concept can work. It works at the Department of Defense where the Defense Privacy Board is very effective in at least putting the break on some of these things. If we allow matching programs, even if they have procedural protections like notification and verification, it is, I think, not sufficient. There has to be really a constant sense of what the authority is, how that authority can be exercised, and some kind of enforcement right exists, if the agency violates it. But, again, the ACLU position really, I think on the use of tax records and matching programs, is fairly firm.

Senator COHEN. One of the recommendations that you made was a Federal Privacy Board. Frankly, many of the recommendations made by the Privacy Protection Study Commission have been either ignored or rejected by the Congress. Is there anybody within the existing Government that we have that would be appropriate to serve in this capacity?

Mr. PLESSER. I think it depends on which part of the recommendations we are talking about. But I think I, for one, thought that the NTIA in the Department of Commerce performed some very important functions before the funding for these kinds of activities was eliminated. They can't do the whole job.

I think that particularly on Privacy Act implementation and matching, there needs to be some agency or activity within departments. How that's done is not clear to me. OMB is in a position to do it, but they I think have some built-in conflicts, as again the Defense Privacy Board indicates. A department can set up an agency within itself which can act as a fairly good policeman.

Senator COHEN. One of the major questions about computer matching programs is that we tend to target them toward either welfare recipients or those programs used by the poor and the elderly. One of the issues raised by the Massachusetts case, for example, is whether or not SSI recipients, or recipients of AFDC, or veterans benefits programs waive their rights to confidentiality of their tax returns.

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[1] See p. — for Mr. Shattuck's statement.

Mr. FRIED. A difficult question that ultimately you and your colleagues will have to deal with. I just remind you that in applying for and becoming eligible for these benefits, there is massive intrusion into the privacy of these individuals already. Far beyond their financial situation, the personal living habits of welfare recipients, who they live with, their employment histories for long periods of time, their medical conditions, are all disclosed and examined.

The question is whether we are going to subject poor people to a different level of confidentiality and a different level of privacy than others. I don't understand why people that receive particular means-tested benefits, poor people, shouldn't enjoy the same privacy as other people who receive means-tested benefits, that is, Small Business Administration loans, farm subsidies, other kinds of subsidies.

Mr. PLESSER. It sounds like the IRS is trying to equal the balance by the use of mailing lists. What we've just discovered this morning is the use of information on occupations and professional activities. I think they are trying to equalize the invasion, and I think that it really raises some very major concerns because there simply are inadequate standards to judge those.

Senator COHEN. Thank you both very much. Your testimony is very helpful. I'll declare a 5-minute recess. We have one more witness to testify. We will resume in exactly 5 minutes.

[The prepared statements of Messrs. Plesser and Fried follow:]

PREPARED STATEMENT OF RONALD L. PLESSER

Mr. Chairman, members of the Subcommittee, my name is Ronald L. Plesser and I am a partner at the law firm of Blum, Nash & Railsback, Washington, D.C. and I am here on behalf of the American Civil Liberties Union. I first became associated with information policy issues in 1972 when I became Director of the Freedom of Information Clearinghouse, a project of the Center for Study of Responsive Law. During that period of time, I litigated many cases under the Freedom of Information Act, several of which involved issues of access to records were personal privacy was a significant issue. I was General Counsel to the United States Privacy Protection Study Commission ("Privacy Commission") from 1975 through 1977. Since that time I have been in the private practice of law in Washington, D.C. representing a broad range of clients in the freedom of information, privacy and information technology areas. I have served as Co-Reporter to the Drafting Committee of the National Conference of Commissioners on Uniform State Laws in connection with the preparation of a Model Information Practices Code. In addition, I was a Consultant to the National Telecommunications and Information Administration in conjunction with their consideration of the Privacy Commission's recommendations during the Carter Administration. I have written and spoken frequently on privacy and The Privacy Act of 1974.

This morning I am pleased to appear before the Subcommittee on behalf of the American Civil Liberties Union to discuss the use by the IRS of private sector mailing lists, and the use of new investigative techniques and disclosure of earned income information to state and local government. These techniques include matching of unrelated computerized files of individuals in order to identify suspected non-filers and under-filers. This technique--"computer-matching"--provides a revolutionary method of conducting investigations because it permits the government to screen the records of whole categories of people, such as federal employees, to determine who among them also falls into separate, supposedly incompatible categories, such as welfare recipients.

Computer-matching and the new disclosure policies of the IRS raise profound issues concerning individual privacy, due process of law and the presumption of innocence. John Shattuck testified before this Subcommittee on behalf of the American Civil Liberities Union in December of 1982 and at that time fully explained the American Civil Liberties Union's position on matching.

The ACLU is a nationwide, non-partisan organization of more than 250,000 members dedicated to preserving and enhancing rights guaranteed by the Constitution. It brings substantial experience and commitment to issues of individual privacy, having been at the forefront of efforts in the Congress over the last decade to enact privacy legislation, notably the Privacy Act of 1974, the Tax Reform Act of 1976, the Right to Financial Privacy Act of 1978, and the Privacy Protection Act of 1980.

In my testimony I will review the particualr problems established by the IRS disclosing additional data about taxpayer and its use of private sector information to create taxpayer profiles. Finally, I will recommend several legislative and regulatory measures to control and limit the use of IRS disclosure, collection and computer-matching in the interests of safeguarding individual rights.

The reasons for congressional and public concern about the widespread use of Federal tax information by government agencies other than the IRS, and for purposes unrelated to tax administration, have been well documented.[1] While the Congress long ago recognized the sensitivity of information obtained and retained for purposes of Federal tax administration, it had nonetheless, in 1910, designated tax returns as "public records" and given to the President and the Secretary of the Treasury broad discretion in making them available to other agencies and persons.

The disclosure to other government agencies of information about individual taxpayers has increased steadily since 1910. In most instances, new uses of such information were authorized administratively and without any real opportunity for public debate. Federal and State agency recipients of the information

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1/ *See*, *e.g.*, Administrative Conference of the United States, *Report on Administrative Procedures of the Internal Revenue Service*, Senate Document 94-266 (October 1975) at pages 821 *et seq*.

met criticisms of their uses of it by asserting that the information was essential to the performance of their particular government functions. In the face of such pleas, it was difficult for IRS administrators to deny them access, and in a substantial number of cases they did not.

The abuses that inevitably resulted were from time to time brought to the attention of the Congress and the public, sometimes dramatically. The Nixon Administration allegedly used tax returns to harass its political adversaries, and an announcement early in 1970's that information about individual taxpayers would be made available to the Department of Agriculture to aid in statistical analysis aroused intense controversy. Allegations that special powers of the Internal Revenue Service were being misused to collection information for purposes well beyond tax administration but related to other law enforcement activities eventually led to a series of Congressional hearings on the propriety of various uses of tax information.[2] They led in turn to the mandate in the Privacy

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[2] See, for example, Federal Tax Return Privacy, Hearings before the Subcommittee on Administration of the Internal Revenue Code of the Committee on Finance, U.S. Senate, 94th Congress, 1st Session; Proposals for Change in the Administration of the Internal Revenue Laws, Hearings before the Oversight Subcommittee of the Ways and Means Committee, U.S. House of Representatives, 94th Congress, 1st Session; IRS Disclosure, Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, 93d Congress, 1st Session.

Act of 1974 given to the Privacy Commission and, two years later, to the restrictions embodied in the Tax Reform Act of 1976.

Federal tax administration depends in large measure on the power of government to compel its citizens to disclose information about themselves, and the existence of special investigative authority. The Commission's mandate did not require it to study the administrative structure of tax administration in detail, although in sections of Chapter 9 the Commission has in a general way examined issues of fairness arising in that context.

Some argue that because the IRS uses government resources to collect tax information, such information should be treated as a generalized governmental asset, and that such generalized use does not constitute a material violation of any interest of the taxpayer because the information belongs to the Federal government. The only disclosure constraint needed, say the proponents of this view, is to assure that the information is used only in pursuit of of legitimate government objectives.

The Privacy Commission emphatically rejected these arguments for two reasons. First,the individual taxpayer is inherently at a disadvantage vis-a-vis a government agency that has access to IRS information about him because the IRS has the threat of serious punishment to compel the disclosure of information the individual would otherwise not divulge. That fact alone, in the Privacy Commission's view, argued in general for carefully controlled dissemination of IRS data on individual taxpayers and in most cases for no dissemination. It is understandable that other agencies with important responsibilities want to use information the IRS has authority to collect but they have not, in fact, been vested with the IRS's authority to compel such information from the taxpayer.

Second, the Privacy Commission believed that the effectiveness of this country's tax system depends on the confidentiality of tax returns and related information. While no one has tried to measure how the knowledge that other Federal and State agencies can inspect tax returns affects an individual taxpayer, the Privacy Commission believed that widespread use of the information a taxpayer provides to the IRS for purposes wholly unrelated to tax administration cannot help but diminish the taxpayer's disposition to cooperate with the IRS voluntarily. This is not to say that the taxpayer will decline to cooperate, but that his incentive to do so may be weakened. Such a tendency in itself creates a potentially serious threat to the effectiveness of the Federal tax system.

The Privacy Commission believed that authorizing the IRS to disclose individiually identifiable tax information to another agency for a purpose unrelated to the administration of a Federal tax law is seldom defensible unless the Congress would be willing in principle to compel individuals to disclose the same information directly to the agency requesting it from the IRS. Even then, however, the agency seeking the information should still have to demonstrate a compelling societal need that disclosure of tax information to it by the IRS would fulfill.

In June 1976, the Privacy Commission recommended the enactment of a Federal statue more stringent with respect to disclosures of records made by the IRS than either the Privacy Act of 1974 or the confidentiality provisions of the Internal Revenue Code (IRC) then in force. The recommended statute would constitute the Service's sole authority to disclose its records about individuals to other Federal agencies and to agencies of State government. The Congress enacted a statute similar in many respects to the one recommended by the Commission as Section 1202 of the Tax Reform Act of 1976. [P.L. 94-455].

We are now facing an increasing effort by the IRS to travel further and further away from the principals of privacy set forth in the Tax Reform Act of 1976, the Privacy Act of 1974 and the Recommendations of the Privacy Commission.

The disclosure by the IRS of earned income data obtained in connection with individuals for tax administration to other Federal agencies and state and local government's is now being encouraged by both the Congress and the IRS without appropriate consideration of these data exchanges. The Senate bill due to the efforts of this Subcommittee now contain some very important procedural protections. These protections however, do not address the important issue of maintaining the confidentiality of

Tax Return information. Of course, in the context of the bills currently being considered the information sought to be disclosed is that obtained from third parties like employers and banks. This distinction, however, should not be the basis for differing treatment. The fact that personal information is maintained about a person by employers and banks should not eliminate that person's expectation of confidentiality. The Supreme Court in both employer records and bank records has stated that individuals do not have an expectation of confidentiality in those records. The Privacy Commission recommended that government access to both bank and employers be subject to the individual rights of privacy. We believe that data received from these sources should be under the same protections as if it came directly from individuals.

The IRS is now also collecting information from private list brokers for the identification of nonfilers from public record information. The concern is not so much their present activities, but the fact that these activitiers.are subject to few, if any, controls. There is nothing in the law to prevent them from using information obtained to do profile which may them be used to identify under-filers.

The authority relied upon by the IRS in Section 760(a) of the Internal Revenue Code which states:

> "The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and

> inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed."

This type of general authority does not effectively limit the collection practices of the IRS. Moreover, the IRS, disowns the source of the mailing lists and states that they are "generally" taken from public sector lists.

Without guidance, it can be expected that IRS will use private lists from private sources to identify potential underfilers. We believe that this is potentially a further invasion of a person's privacy and can lead to the connection of private sector information data bases.

All of these issues leads us to ask who in the Administration is looking at privacy and who if anyone is seeking to balance other governmental balance with those of privacy. The answer is that nobody is looking at privacy. The Privcy Commission recommended an alternative approach.

The Privacy Commission was directed by the Congress in the Privacy Act of 1974 to examine the effectiveness of the Privacy Act itself and to make recommendations concerning certain of its provisions. The Privacy Commission recommended significant revisions to the Privacy Act primarily aimed at the exemption structure, the availability of damage remedies and the system of record-routine use concerns. I think by and large the Privacy Commission's analysis of the Privacy Act in 1977 holds true today. Some of its recommendations, however, may have been overly ambitious and unrealistic in making a more workable statute.

One of the recommendations of the Privacy Commission which has been often overlooked is one that I think bears repeating this morning and further examination in detail. The Commission stated:

> "in all areas of the public sector the Commission has studied, the need for a mechanism to interpret both law and policies is clear. The difficulty of deciding which disclosure of records about individuals are routine within the meaning of the Privacy Act often raises conflicts of interests or interpretation between two or more Federal agencies. Similarly as indicated in Chapter 13, Federal agencies often need an efficient means of arriving of common solutions to their common privacy protection problems such as establishing procedures for the disposal of records, the propagation of corrections and the maintenance of accounting disclosures".

(Privacy Commission Report, p. 36).

In furtherance of those conclusions, the Privacy Commission recommended:

> "That the President and the Congress establish an independent entity within the Federal government charged with the responsibility of performing the following functions:
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> (a) To monitor and evauate the implementation of any statutes and regulations enacted pursuant to the recommendations of the Privacy Protection Study Commission, and have the authority to formally participate in any Federal administrative proceeding or process where the action being considered by another agency would have a material effect on the protection of

personal privacy, either as the result of government regulation of others.

(b) To continue to research, study, and investigate areas of privacy concern, and in particular, pursuant to the Commission's recommendations, if directed by Congress, to supplement other government mechanisms through which citizens could question the propriety of information collected an used by various segments of the public and private sector.

(c) To issue interpretative rules that must be followed by Federal agencies in implementing the Privacy Act of 1974 or revisions of this Act as suggested by this Commission. These rules may deal with procedural matters as well as the determination of what information must be available to individuals or the public at large, but in no instance shall it direct or suggest that information about an individual be withheld from individuals.

(d) To advise the President and the Congress, government agencies, and, upon request, States, regarding the privacy implications of proposed Federal or State statutes or regulations.

(Privacy Commission Report, p. 36).

The entity the Commission recommended may be a Federal Privacy Board or some other independent uint. However, if a new entity is established, the only enforcement authority the Commission would recommend it be given would be in connection with the implementation by Federal agencies of the Privacy Act itself. Its oversight responsibility in all of the other areas covered by the Commission's recommendations would require it only to participate in the proceedings of other agencies when substantive privacy issues are involved. For example, if the

Federal Reserve Board were to issue proposals who amend its regulation Z pursuant to the Truth-in-Lending Act after the Commission's recommendations are adopted, the new entity could participate in the proceedings only to the extent of presenting testimony and other comments from a privacy protection point of view.

Interesting enough, it is Item (b) of the Privacy Commission proposals which most cries out for action. There is simply no independent board, body or person in the Federal Government whose job it is to research, study and investigate areas of privacy. The Office of Management and Budget deals with the Privacy Act in order to make its application the least burdensome on agencies. They answer questions while they should be asking them. The National Telecommunications and Information Administration had the job for a while of looking into information policy and privacy in particular. That function for NTIA has been all but eradicated. There is no agency to resolve issues such as match, to resolve the conflicts between the application of the Privacy and the Freedom of Information Act or the use of IRS data by agencies other than IRS. The Justice Department has taken on a role of representing its clients and not of developing policy. I believe that in the year of 1984, which will both be the ten year anniversary of the Privacy Act and is a year of literary significance, Congress should consider the establishment of such a Commission for purposes of making the Privacy Act a realistic tool to protect individual rights.

PREPARED STATEMENT OF BRUCE M. FRIED

I am Bruce M. Fried, an attorney at the National Senior Citizens Law Center (NSCLC). I am pleased to appear today at the invitation of Chairman Cohen.

NSCLC is a law firm specializing in the legal problems of older, poor people, funded primarily by the Legal Services Corporation. Pursuant to NSCLC's grant from the Legal Services Corporation, we provide assistance, advice, support and training to legal services attorneys throughout the country with respect to the legal problems of their older clients. My responsibilities include working with legal services and aging professionals in the areas of Supplemental Security Income, Medicare and the delivery of services pursuant to the Older Americans Act.

Senator Cohen has asked me to address the following issues:

(1) The views of the National Senior Citizens Law Center concerning the transfer of tax data to federal or state government agencies for the purposes of verifying eligibility for government benefits.

(2) A description of the issues raised by the plaintiffs represented by the National Senior Citizens Law Center in the cases of Tierney v. Schweiker, Civil Action No. 82-1638 (D.D.C.) and Trahan v. Regan, Civil Action No. 82-3004 (D.D.C.).

(3) The procedures, if any, that the National Senior Citizens Law Center would recommend that the Congress or federal agencies adopt to better address the privacy or due process rights of individuals whose records are matched.

Our experience in this area comes from two sources. First, we have represented individuals in litigation against HHS and IRS which challenged the Social Security Administration's coercion of SSI recipients to "consent" to release of their confidential tax information. Second, through our contacts with local legal services programs, we are familiar with the experiences of benefit recipients in Massachusetts when that state obtained information, similar to that available from the IRS, from financial institutions and used it in determining the eligibility of those persons for benefits. Our experience in these matters has raised a number of concerns which I will discuss below.

The Social Security Administration's policy of requiring individuals to disclose confidential tax information.

Beginning in May of 1982, the Social Security Administration (SSA) initiated a policy of requiring applicants for and recipients of Supplemental Security Income (SSI),* and others, to sign a form authorizing the Internal Revenue Service (IRS) to disclose to SSA certain tax information (Attachment A). SSA sought this tax information for the purpose of verifying the income and assets of SSI recipients.

While SSA may have preferred to obtain the tax information from the IRS without the authorization of SSI beneficiaries, the Internal Revenue Code (IRC) stood in its way. Section 6103 of the IRC provides that tax information "shall be confidential" and shall not be disclosed without the written consent of the taxpayer, or except as authorized by §6103. At that time (and currently) §6103 did not authorize the IRS to disclose tax information to the SSA for the verification of entitlements to welfare benefits. While SSA could have requested that the beneficiaries consent it chose a different tact, calling it "consent": threat and coercion.

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* The Supplemental Security Income (SSI) program, Title XVI of the Social Security Act, 42 U.S.C. §1381 *et seq.*, is a means tested welfare program providing basic subsistence benefits to severely disabled, blind, and elderly poor persons. In order to be eligible for SSI benefits, an individual may not have assets of more than $1500 and a couple may not have assets of more than $2250. Eligible individuals receive the standard payment amount of $314 a month (which may be reduced, on a dollar for dollar basis, if the eligible individual has income from another source), and are also entitled to Medicaid benefits. There are more than 4 million people currently participating in the SSI program.

The form SSA employed simply precluded voluntariness and free choice - the essence of consent. The pertinent section of the form stated:

> "You have a choice about signing the form. But we must have accurate information about your income and what you own to pay your Supplemental Security Income check. If you do not sign the form, your Supplemental Security Income checks may be affected."

Shortly after SSA initiated the use of this form we were contacted by a number of SSI recipients, and their attorneys. At their request, and on their behalf, NSCLC filed suit on June 14, 1982 in the United States District Court for the District of Columbia. (See Tierney v. Schweiker, Civil Action No. 82-1638, (D.D.C.). The suit challenged SSA's authority to coerce authorization to disclose beneficiary tax information, and also alleged violations of the Privacy Act, the Administrative Procedure Act, and the due process clause of the Fifth Amendment of the Constitution. This suit was dismissed on jurisdictional grounds without reaching the merits.

Subsequently, we learned that SSA had requested the IRS to disclose tax information based on the 3 million "authorization" forms that had been returned. After twice writing to the IRS

Commissioner inquiring about what policy would be followed and receiving no response, a second suit was filed on behalf of SSI recipients who had signed the form. (Trahan v. Regan, Civil Action No. 82-3004 (D.D.C.)). In that suit, plaintiffs argued that the SSA form, with its threat to "affect" the subsistence benefits of recipients who did not sign it, was on its face coercise. Thus, the form could not embody the consent required before the IRS could disclose tax information regarding an individual pursuant to Section 6103 of the Internal Revenue Code. The suit sought to require the IRS to enforce IRC §6103, and the pertinent IRS regulations.

Trahan was also dismissed by the district court which issued a decision that found jurisdictional deficiencies and a lack of merit for the substantive claims. 554 F. Supp. 57 (D.D.C. 1982).

Both suits were appealed and were consolidated for consideration by the U.S. Court of Appeals. In its opinion, the Court of Appeals reversed the decision in Trahan, upholding the confidentiality rights of the SSI recipients and, then not needing to reach the jurisdictional issues in Tierney, vacated the lower court's dismissal of that action. (Tierney v. Schweiker, Trahan v. Regan, 718 F.2d 449 (D.C.Cir. 1983). .

As the Court of Appeals observed:

> "The form used in this case makes a mockery of the consent requirement [of IRC §6103]. The form itself contained poorly-veiled threats that the recipients' benefits would be terminated if they failed to sign the forms...The language of the form was thus likely to coerce individuals, who depend on Social Security for their subsistence, into giving up their right to confidentiality..."

It should be noted that the Court of Appeals went on to observe that:

> "...no consent form would be required (barring constitutional difficulties) should Congress create another exception to the confidentiality requirement of [IRC] Section 6103 so that SSA could use tax return information to determine the eligibility of benefits recipients."

The greatest concern arising from this situation is that SSA administrators were more than willing to coerce aged, blind and disabled elderly persons into waiving their tax confidentiality. Any unbiased observer would have found the form to be a "mockery" of the IRC consent requirement, just as the Court of Appeals did.

Of equal, perhaps greater, concern was the IRS' failure to refuse to disclose the tax information in the face of such clear coercion. Apparently, the IRS was willing to stand back and let the courts decide what policy the IRS should have.

This experience at the federal level suggests that there will be similar types of abuses at the state and local levels. The pursuit of waste, fraud, and abuse may place in jeopardy fundamental notions of fairness and due process, creating "guilty until proven innocent" presumption. Indeed, the experience in Massachusetts lends credence to our concern.

The State of Massachusetts Bank Match Program

During the last two years, the State of Massachusetts operated a program under which financial institutions were required to supply information regarding interest income on any account having a Social Security number identified by the state to belong to a welfare recipient. Once the state received the information from the banks, it created a presumption based solely on that information, that a recipient's income or resources exceeded the relevant limit. The recipient was not contacted nor was any other effort made to verify the accuracy of the information.

An investigation into the validity of the presumptions and the policy in general revealed the following:

- Some recipients presumed by the state to have excess income or resources were merely listed on a bank account as a matter of convenience, and, in fact, had no interest in or access to the account for their own needs. (This is particularly common with elderly and disabled individuals who will ask another relative to place his/her name on the account in order to assure that there will be access to the funds if the elderly person is too ill or otherwise incapable of getting to the bank. NSCLC has received numerous calls on joint bank account problems in SSI over the years. One common problem is that of the younger disabled or blind SSI recipient whose name is on an elderly parent's account for convenience. SSA often tries to claim that the account belongs to the younger person.)

- In some cases, non-welfare recipient individuals interested in avoiding payment of taxes on their interest income have given the financial institution a false Social Security number, in order to avoid detection by the IRS. In some cases in Massachusetts, the number actually belonged to a welfare recipient who had no knowledge of the illegal activity. However, because only the Social Security number was utilized in obtaining information, they soon discovered the problem when the state terminated their benefits. No effort was made by the state to verify that recipients really had the accounts before action to terminate took place.

- Financial institutions made clerical errors in reporting unearned income to the IRS, often resulting in overstated earnings. Because the state did not verify the accuracy of the information, recipients were illegally terminated.

- There is a fairly significant time delay problem with the information. For example, if SSA receives information from the IRS today, it will probably be at least one to two years old. In Massachusetts, termination actions were based solely on the outdated information without regard for the current financial circumstances of the recipient.

Recommendations to protect persons whose tax information is disclosed to state and federal agencies.

If it is Congress' will that an individual's tax information may be disclosed by the IRS to welfare agencies for the purpose of verifying eligibility to means-tested programs, it is essential that certain minimal protections be provided. Both the House and Senate Budget Reconciliation bills contain various protections to assure that a federal or state agency which receives IRS information regarding a person's unearned income assures that the information is both relevant and accurate before it relies upon it. The House language on verification is superior to the Senate language in two respects:

(a) While the House bill requires verification before the agency can act to "reduce, suspend, terminate or deny" benefits, the Senate version only requires verification before benefits are "terminated or decreased." The Senate language therefore leaves initial applicants at the whim of the agency on the issue of independent verification.

(b) The House bill specifies that verification must include" (1) verification of the exact amount of the asset or income involved, (2) an evaluation of whether such individual actually has access to such asset or income for his or her own use, and (3) a determination regarding the period or periods when the individual actually had such asset or income." The Senate bill only requires that the IRS information be independently verified. It will be very important to retain the House verification language. If the Senate language is adopted, it is likely that the verification will be accomplished by a computer match of a bank account record, often the source utilized for the IRS information in the first place. While arguably this is not an "independent" verification, the House bill assures that the agency will make a more accurate and relevant verification of the IRS data.

The Senate bill contains one very helpful feature not included in the House bill. It requires that, at least in termination and reduction cases, before the action can be taken, the agency must provide notice of the planned action and give "an opportunity to refute such information." It would be very helpful to retain this language. However, it should be amended to apply to any time that benefits will be "reduced, terminated, suspended, or denied" as is provided in the House bill.

Thank you for the opportunity to share our experience with the Committee.

[Recess.]

Senator COHEN. The subcommittee will come to order.

The last witness this morning is Alexander Hoffman, chairman of the board of the Direct Marketing Association. Mr. Hoffman's association is a trade coalition, whose members include businesses involved with all aspects of direct marketing. Some of the Nation's largest commercial mailing lists come from members of the Direct Marketing Association.

Mr. Hoffman, welcome.

TESTIMONY OF ALEXANDER HOFFMAN, CHAIRMAN OF THE BOARD, DIRECT MARKETING ASSOCIATION

Mr. HOFFMAN. Thank you.

Just to identify who I am, I'm group vice president, Doubleday & Co., Inc., which is a diversified New York publishing house which does general trade publishing, both hard cover and trade paperback and mass market paperback. We also have a chain of book stores and run a number of book clubs.

I'm here as chairman of DMA.

I'll try to shorten some of this printed material, but I think some of it is fairly fundamental, and I'd like to set it out logically for you.

I want to say at the outset, that the direct marketing industry shares your concern that personal privacy continue to be protected in this era of the computer and other manifestations of high technology. My chief aim this morning is to help clarify the distinction between unauthorized release of properly private individual information and the legitimate, essentially anonymous use of marketing characteristics in compiled mailing lists, a process that serves the public well in many diverse ways.

DMA consists of about 2,400 firms in this country and outside this country which represent all kinds and levels of industry, manufacturing, wholesale, and retail. All of them market goods and services through direct response methods, including direct mail advertising and mailing lists. As a measure of direct marketing's economic importance and consumer acceptance, consumer sales volume from catalogs alone was estimated to be $44 billion in 1983, a figure that's doubled in only 7 years.

We estimate that the total sales volume of all direct marketing and related service industries approaches $150 billion, a very important part of this economy.

It's important to bear in mind the many and varied economic and social benefits of direct marketing. It is beyond the scope of this testimony to go into all of them, but suffice it to say that direct marketing is an effective and efficient way to communicate information about available goods and services to target audiences, to provide maximum convenience to the elderly, as well as the increasing number of families with both heads of households working, to aid fundraisers and charitable activities, as well as to assist political candidates, parties and causes. Although mail is only one of the many media used to carry a direct marketer's message to his intended audience, it's convenient to use that medium as an example to demonstrate the methods which have been developed by the business community to protect privacy.

First, a little background on the use of mailing lists in direct marketing. What is a list, where does it come from and how is it used? A mailing list is simply a list of names and addresses which can be derived from sources as comprehensive as telephone directories or as selective as the subscription list of a small circulation magazine on contemporary art. A retailer may maintain a list of his customers, a charity of its contributors, or a Congressman of his constitutents. Each may, of course, attempt to categorize or segment them by, for example, product or service, frequency or type or party affiliation. Maintenance and storage is usually done by computer. But in all cases, whatever the degree of refinement of the list, the objective is simply to insure that recipients of the mail sent out are likely to have an interest in what the mailer has to say.

For example, when my company makes a mailing on behalf of the Literary Guild, we can only afford to mail to lists of that small remnant of the population who actually read books or at least are highly active readers in general, who might become active book readers.

What's the nature of the marketplace for lists? It is common practice for a list owner—for example, a retailer with customers, a charity with donors, or a magazine with subscribers—to permit the one-time use of its list by another, frequently by an advertiser. For example, the Literary Guild might use the subscription lists of Harper's and the Atlantic Monthly for a promotion mailing, because readers of those magazines are above-average book readers. However, it is important to realize that a commercial mailing list transaction prohibits the list user, by legally enforceable contractual obligation, from copying or making a record of the names and addresses on the list.

Note that distinction from the IRS use of lists. The purpose and function of a commercial mailing list is solely to furnish names and addresses to be used in the process of mailing promotional material of the user to the listed addressees. It is not to convey any information for any cognitive purposes and never purposely discloses anything about the name and address of each person on the list, except that by implication, that he or she falls within the generic category of persons that comprise the list. Transposition of names and addresses from the list to the mailing pieces is done mechanically, electronically and automatically.

A list user gains no information or knowledge as to the contents of the list by having the list, which in its physical form consists of magnetic tapes or sheets or labels transmitted to him or received by him.

Thus, in many mailing list transactions—indeed, perhaps in by far the majority of them—the magnetic tape or mailing label itself is delivered temporarily to an independent letter shop engaged by the advertiser or to the advertiser itself for the single mailing involved.

In the marketing world, the list user never employs a list to ascertain any private information about any of the list's members. He simply utilizes the list to get his mailing to the mail box of potential customers who remain, in effect, anonymous so far as the list user is concerned.

Senator **Cohen**. Could I interrupt you just a moment, Mr. Hoffman?

I've seen questionnaires mailed to me saying, "Please provide your name, Social Security number, your residence, white, black, ethnic minority." "Are you at an income level of $10,000, $20,000, $50,000 and above?" All sorts of information would go to some company.

Do you mean to say that this information is not collected by the makers of lists, so they can then target their products to that particular income class group?

Mr. **Hoffman**. I think the kind of thing you're thinking of occurs often when you buy a particular product, typically, an appliance, I can think of just a recent example in my own experience when you buy something, and you're asked to send back a warranty card, and the manufacturer will often have a questionnaire attached to it, in which he asks you to tell him that kind of information. That would be an effort of that manufacturer to better understand who his customers are, what kind of people buy his product.

The kind of mailing list that he would have would reflect the information he was able to gather in this manner. If somebody approached him and said, "Can I rent a list of the buyers of your product," to the extent that the public had been willing voluntarily to fill out that questionnaire and send it in to him, he would be able to tell the renter of that list the average characteristics of the purchasers of his kind of product. So then the potential renter of that list could decide whether those are the kinds of people that might be good prospects for my product.

So, yes, the owner of that list would tell the prospective user of the list, "Here are the average characteristics of the purchasers of XYZ products." And the renter can decide whether or not that's of interest of him.

Senator **Cohen**. In other words, let's say that Neiman-Marcus sends out a questionnaire saying, "Where did you get this product? Which store? How did you learn about it? Who told you about it? Was it through advertising? Was it in the New York Times book magazine section? Was it in Harper's magazine? Was it in one of these certain types of publications that we ordinarily associate with higher income groups?" And then it goes on to ask questions about your general income level. That is all compiled, and they do an analysis saying perhaps that 65 percent of the people who shop at Neiman-Marcus fall in the following categories: they're either white, black, Hispanic, at certain levels of income. That is the assumption that is made. If that list is then sold to the B. Altman Co., they say, "Well, we'd like to get in on that too, that particular group. So let's make the rounds of either high, middle, or low income people."

Is that essentially it? So if the IRS were to then have the access to Neiman-Marcus' list of purchasers, people who buy their catalogs, that would tell them a certain thing?

Mr. **Hoffman**. That's right.

Senator **Cohen**. That isn't necessarily true though, is it?

Mr. HOFFMAN. That's right. That is one of the reasons why we think it is wildly inappropriate for the IRS to use these things. It's one thing for a marketer, struggling to find that portion of the whole population that might be a good prospect for whatever it is he has to offer, to use broad averages—and that's what these things are—and another for the IRS to use them for tax enforcement. Also people would be willing to fill out a questionnaire like that in good faith, if they think, as they presently do, that that kind of information is simply used for marketing purposes, to help the manufacturer understand his market better and to help mailers only send their mail to people who might be interested. If they think it's being used for something utterly different, it can poison the whole atmosphere, the whole public perception of marketing.

Senator COHEN. It might even get into the hands of us politicians, and we'd put them on our mailing lists as well, to solicit donations. And they'll really know what a curse that can be.

Mr. HOFFMAN. Heaven forbid!

So let me pick up here. We maybe covered some of this. I'll try to skip things that we've covered, as we come to it.

From all of this, you can see that the process itself—I'm speaking now of the commercial process—tends not to endanger personal privacy in any meaningful way, a conclusion which was reached by the Presidential Privacy Protection Study Commission, on which Mr. Plesser served; however, let us look at the additional steps the direct marketing industry takes to ensure that privacy is protected.

It is interesting to note that they do these things in their own self-interest, as well as in the public interest. First, a mailer obviously has a strong economic incentive not to mail to people who find his mailings annoying and then throws them away unopened. To help reduce unwanted, and hence, unprofitable mailings, the DMA maintains a mail preference service, which is widely promoted to the public. The mail preference service provides an individual with the means both to have his name removed from the mailing list or to have his name added to lists in which he may have a particular interest. For example, sports, camping equipment, books or whatever.

Since the inception of this service in 1971, about 495,000 people have asked to have their names added to lists, while about 333,000 have asked to have their names removed. The add-on service was first offered in 1974, so the delete service has been operating longer.

Next, individual mailers notify their customers that they periodically rent their lists to others having something to offer in which they think their customers would be interested. They give them the opportunity to have their names omitted from such lists, if that is their desire. Thus people both can get off of lists they're already on and avoid getting on lists in the first place.

Finally, DMA has promulgated suggested guidelines for personal information protection to provide individuals and organizations involved in direct mail an direct marketing with principles of conduct and are generally accepted, which will help insure consumer privacy.[1] We believe they are routinely followed by most companies in this business.

It should be noted that no mailing list is conceivable that would be constructed on the basis of unfavorable information regarding the names upon it. Lists that constitute reports regarding the credit status of individuals are, of course, not mailing lists, and in any event, they're already covered by the Fair Credit Reporting Act.

The only consequence of being on a mailing list is that one receives something that he presumably has an interest in. At that point, he is free to read it or throw it away, as he chooses.

The key to the whole process is the fact that direct marketers limit the collection and transfer of information to marketing purposes only. This has been the longstanding and natural practice of the business community, inasmuch as it is only in such uses that the direct marketer has an interest.

By limiting the use of data to such commercially routine matters, consumer protection and privacy is not endangered. Neither DMA nor the business community, in general, condones the use of mailing lists which are not compatible with the purpose for which the information is collected. Indeed, we believe that this precept should be followed by all—Government, as well as the private sector.

The DMA guidelines specifically state that mailing lists should be rented for marketing purposes only, and we question the wisdom of Government agencies seeking to use them for other purposes. This would tend to undermine public confidence in a socially and economically important process and possibly improperly endanger personal privacy as well.

It is noteworthy that the U.S. Supreme Court has held that the first amendment protects not only a speaker's right to communicate but also a listener's right to hear. Thus, when balancing the various delicate rights of individuals, the judiciary has fully protected all forms of commercial speech, including those uniquely employed by director marketers, which brings us to our concern with the efforts of the IRS to use mailing lists as a means of catching nonfilers.

We do not question the legitimacy of what the IRS is trying to do to deal with the very intractable problem of finding people who seek to be invisible and simply never file tax returns. We appreciate the need the IRS has to find more effective means to solve this problem. On the other hand, we have serious reservations about their use of any mailing lists, whether they are compiled from public or private sources. We believe that the use of lists for purposes other than that for which they were compiled raise serious privacy questions and could jeopardize the effectiveness of a major form of marketing, as well as other important activities dependent on public support.

We've met at length with IRS Commissioner Egger and have maintained a continuing dialog with key IRS staff in an effort to further understand each other's point of view. IRS officials claim they're only using lists based on public information, although as we saw in earlier testimony this morning, that appear not necessarily to be the case. At least they say they don't know where their lists came from.

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[1] See p. 224.

They draw a distinction between lists compiled from public sources and lists compiled from private sector sources, such as a company's customer list. However, our concern is with the public's perception of what the IRS is doing. The public will never make fine distinctions between the sources of mailing lists. They will simply perceive that the Internal Revenue Service is now using mailing lists to track people down, and in the minds of many, they will perceive it as harassment. They will also come gradually to understand that the IRS is using census data to overlay on the basic mailing lists.

We believe that an inevitable consequence of such a chain of events carried out broadly and nationally will be a tendency on the part of people to view this as one more invasion of privacy, one more step in Government intrusion in their lives.

I noticed, incidentally, in Commissioner Egger's testimony, that their own study of public opinion done by Roper would tend to confirm this judgment. The public already thinks, incorrectly, that the IRS is disseminating private information. They would gradually tend to conclude that it is not a very good idea to have your name on a mailing list. I think that's simply an inevitable consequence. Next, perhaps they will conclude that it is not even a very good idea to be a voluntary participant in market research, and next, perhaps, that it is not even a very good idea to be a voluntary participant in filling out a census questionnaire.

These are subjective judgments as to what the consequences of the IRS' action would be; however, the more we analyze the possible consequences of the IRS' use of mailing lists, the more convinced we become of the wisdom of not using data for a purpose different than that for which it was collected, or from that for which the person from whom it was collected expects it to be used.

This is a fundamental principle in direct marketing, and it's a generally followed practice in Government. Currently, the Government maintains massive lists which can only be used for the purpose for which they were compiled, with certain specific exceptions. The IRS or any other agency cannot use individual census forms to track down tax cheaters nor can they use Social Security data, although we've been learning this morning about more exceptions than I knew about.

Private sector mailing lists, no matter from which sources they are compiled, are used for marketing purposes, and in no case are used to discover specific data about specific persons.

The IRS goal is substantially different. To the best of our knowledge, private sector lists have been used in the past by Government primarily to market publications and conferences and to convey information to specific audiences. For example, the Government Printing Office may rent the subscription list of a business magazine or newspaper to market a financial services publication. Another Government agency might rent a list to promote a specific conference or to provide information to the elderly. The Peace Corps might seek a list of college professors as part of its recruitment efforts.

I think the public understands perfectly well from their experience that up to now, all that happens as the result of being on a mailing list is that you get mail. You are either interested in it or you are not. You read it or you throw it away. And that is essentially a benign process. But if the public ever comes to feel personal privacy is endangered by this process, they could change their attitude entirely.

Let me show you why we think it is inevitable direct marketing would be harmed with a concrete example.

When somebody joins the Literary Guild, we send a welcoming letter stating, among other things, that we periodically make lists of our members available to other publishers and others who may have something of interest to offer. We give them the option of refusing to allow us to include their name on such lists, and if that is their preference, we honor it. Our members accept that with confidence and believe exactly what we have said. Most members trust our judgment and do not choose to exclude their names from our lists, but if members came to think that instead of just renting that list to another publisher, who might want to offer them books, we somehow or other permitted the Internal Revenue Service to use it for enforcement purposes, their confidence in us and the entire system would be undermined.

Individual privacy is important to legitimate business people. With that in mind, the business community has done what we think is an effective job in seeing to it that consumer privacy is maintained. We believe the IRS has an obligation to do the same.

I'll be happy to try to respond to questions.

Senator COHEN. Thank you very much, Mr. Hoffman.

To your knowledge, have some commercial mailing list firms refused to sell lists to the IRS?

Mr. HOFFMAN. Yes. To the best of my knowledge, all of them, except one. One firm did agree to sell. All the rest of them chose to abide by the guideline of the Association that lists should be rented for marketing purposes only and have, hence, declined to rent their lists to the IRS.

Senator COHEN. So this really is an association guideline, but nothing that would prohibit any mailing list firm to sell those?

Mr. HOFFMAN. It's purely voluntary. The antitrust laws insure that it's purely voluntary.

Senator COHEN. I think we did indicate how a mailing list firm develops its income figure. The IRS said earlier that they were unaware of how you developed these figures that you rely upon to try to market a product.

Mr. HOFFMAN. There are all kinds of ways——

Senator COHEN. Are they pretty standard, though?

Mr. HOFFMAN [continuing]. That you would use. You might use your own market research. For instance, we will go out and try to do broadly based market research. First, you've got to find people who read books, and that's not particularly easy, but then having found them, you try to get them through voluntary participation in market research to tell you as much about them as they're willing to, so you have sense of who it is that reads.

Also, a list compiler would tend to use the public portions of census data. For example, the average income in block districts, and things like that. So the general averages that are reflected in market research come from a diversity of sources.

Senator COHEN. Do you think that Congress should take any action to impose restrictions or guidelines about the use of commercial mailing lists by the IRS or any other Government agency, or do you prefer——

Mr. HOFFMAN. I guess—I'm torn by a thing like that. Usually the last thing in the world you want is one more Government regulation, one more intrusion of the Government into the free marketplace, yet we really are worried stiff about this. It's a matter of judgment, as I said. It's a matter of judgment as to what public perception will be, but I've explained why we are very worried about it, and I think I'd have to say—speaking for myself, I couldn't say this on behalf of the Association—I think I would welcome it. I think it's an incorrect use of something, and it can have a very deleterious effect on a very important part of the marketplace.

Senator COHEN. Some of the members who were here on behalf of the IRS are still in the audience, and I'd like to just make a point that I think has to be made.

The suggestion was made several times during the course of this morning's hearings that if you have nothing to hide, there's nothing to fear. While that has surface plausibility and, I suppose, acceptability, one of the difficulties with that is, that we are, as a people, different than all other societies, especially the Soviet Union, Eastern bloc countries—even different from those we heard about from Mr. Plesser—Norway or Sweden. We are suspicious, as a people, of government. And there is a big difference. We do not take the policy that we have to prove our innocence or we have nothing to hide.

That is not the way in which this country was founded. It was founded with a specific suspicion of the Government. That is the whole Bill of Rights. We do not want the Government intruding, whether it be on the grounds of the 1st amendment, the 4th amendment, 5th amendment, or the 14th amendment. We want them out of our lives.

It is one thing for us to deal on a personal basis with some company that wants to know more about us, so it can start putting us on its mailing list for certain types of goods and services.

It is quite another thing to say, "Well, if you have nothing to hide, you should not resent that information going to the Federal Government."

It is because we are suspicious of the powers of a Federal Government, and we ought to remain so. The suspicion was just evidenced by you yourself about Congress. Ironically enough, you are now put in the position of saying "We don't like Congress taking all this action, because the minute you start legislating, we've got to fear you too." Yet you now find yourself in the position of deciding which is the lesser of two evils, having Congress legislate or the IRS use mailing lists which you believe subvert the very purpose for which that information was collected.

Mr. HOFFMAN. I would certainly draw a distinction between the Congress acting to manage or regulate the ways in which an arm of the Federal Government can and cannot intrude itself, and the other. That's why I said, speaking for myself, I'd kind of like to see you do that.

Senator COHEN. But what you did, in your own hesitancy, was to point out that you, as a private citizen, are normally suspicious of Government intrusion into your private affairs, be it personally or in the private sector.

That is something that is at the very core of the American way of life. We are suspicious of Government taking action ostensibly for our benefit, but ultimately, the fear is it will not be for our benefit, that it is going to cost us something in return, and what it is going to cost us usually is a measure of those freedoms that we keep celebrating day after day.

The point that has to be made is not that if you have nothing to fear or if you are honest, then you do not worry about the IRS causing you problems, because that is a mindset which is totally antithetical to the American way of life. I am as much a part of the problem as anybody here. We keep passing legislation trying to deal with efficiency. We listen to the Grace Commission Report saying that we are wasting a lot of money, and we have got to do something to correct that.

Before us is a proposal that you can help collect more taxes from people who are evading the law. Again, no one can challenge the need to wipe out fraud and waste and to get at people who are not paying their taxes. But it has to be placed within an overall framework that most of us are not fully aware of, on a day-to-day basis. We keep acting on individual pieces of legislation saying that these are for good goals. Collecting taxes is a good goal. We want all of those people who are not supporting their children to pay up. We want all those people who have not paid their debts to the Federal Government to pay up. We want all those people out there who are in one way or another avoiding their citizen obligations to pay up. What we are doing in the process, however, is that we are creating more and more exceptions, admittedly for noble reasons. Ultimately, however, the cumulative effect is to wipe out what is at the heart of our society, and that is the suspicion, this legitimate suspicion of the role of government in our lives.

So I thank you, Mr. Hoffman, very much for your testimony.

To me, this has been a very beneficial hearing.

Mr. HOFFMAN. Thank you for the opportunity.

[Mr. Hoffman's prepared statement follows:]

PREPARED STATEMENT OF ALEXANDER C. HOFFMAN

My name is Alex Hoffman. I am Group Vice President of Doubleday & Company, Inc., a diversified New York publishing house which does general publishing, both hardcover and paperback, elementary and secondary textbook publishing, operates a chain of bookstores and runs a number of large and small book clubs.

I am here today as Chairman of the Board of Directors of the Direct Marketing Association, Inc., known as DMA, a trade association incorporated under the Not-For-Profit Corporation Law of the State of New York. On behalf of DMA, I extend my deep appreciation to Chairman William Cohen and the Senate Subcommittee on Oversight of Government Management for the opportunity to share our thoughts with you today on the question of privacy protection in general, and to discuss specifically our concern with the use of mailing lists by the Internal Revenue Service to identify people who have not filed tax returns.

I want to say at the outset that the direct marketing industry shares your concern that personal privacy continue to be protected in this era of the computer and other manifestations of high technology. My chief aim this morning is to help clarify the distinction between unauthorized release of properly private individual information and the legitimate, essentially anonymous use of marketing characteristics in compiled mailing lists -- a process that serves the public well in many diverse ways.

DMA has nearly 2,400 member firms in 47 states and 26 foreign countries which represent every functional level of industry -- manufacturing, wholesale and retail. These companies market goods and services through direct response methods, including direct mail advertising and mailing lists. As a measure of direct marketing's economic importance and consumer acceptance, consumer sales volume from catalogs alone was estimated to be $44.4 billion in 1983, a figure that has doubled in only 7 years. We estimate that total sales volume of all direct marketing and related service industries approaches $150 billion.

It is important to bear in mind the many and varied economic and social benefits of direct marketing. It is beyond the scope of this testimony to go into all of them, but suffice it to say here that direct marketing is an effective and efficient way to communicate information about available goods and services to targeted audiences, to provide maximum convenience to the elderly as well as to the increasing number of families with both heads of household working, and to aid fund-raisers and charitable activities as well as to assist political candidates, parties and causes. Although mail is only one of the many media used to carry a direct marketer's message to his intended audience, it is convenient to use that medium as an example to demonstrate the methods which have been developed by the business community to protect consumer privacy.

First, a little background on the use of mailing lists in direct marketing. What is a list, where does it come from, and how is it used? A mailing list is simply a list of names and addresses which can be derived from sources as comprehensive as telephone directories or as selective as the subscription list of a small circulation magazine on contemporary art. A retailer may maintain a list of his customers, a charity of its contributors or a congressman of his constituents.

Each may, of course, attempt to categorize or segment them by, for example, product or service, frequency and type, or by party affiliation. Maintenance and storage is usually done by computer.

But in all cases, whatever the degree of refinement of the list, the objective is simply to insure that recipients of the mail sent out are likely to have an interest in what the mailer has to say. For example, when my company makes a mailing on behalf of the Literary Guild, we can only afford to mail to lists of that saving remnant of the population who actually read books, or at least are highly active readers in general who might become active book readers.

What is the nature of the marketplace for lists? It is common practice for a list owner (e.g., a retailer with customers, a charity with donors or a magazine with subscribers) to permit the one-time use of its list by another, frequently by an advertiser. For example, the Literary Guild might use the subscription lists of Harpers or the Atlantic Monthly for a promotion mailing because readers of those magazines are above average book readers.

However, it is important to realize that a mailing list transaction prohibits the list user, by legally enforceable contractual obligation, from copying or making a record of the names and addresses on the list. The purpose and function of a mailing list is solely to furnish names and addresses to be used in the process of mailing promotional material of the user to the listed addresses. It is not to convey any information for any cognitive purposes and never purposely discloses anything beyond the name and address of each person on the list and, by implication, that he or she falls within the generic category of persons that comprise the list. Transposition of names and addresses from a list to the mailing pieces is done mechanically, electronically and automatically. A list user gains no information or knowledge as to the contents of the list by having the list, which in its physical form consists of magnetic tapes or sheets of labels, transmitted to him or received by him.

Thus, in many mailing list transactions (indeed, perhaps in by far the majority of them), the magnetic tape or mailing label list itself is delivered temporarily to an independent lettershop engaged by the advertiser, or to the advertiser itself, for the single mailing involved. In the marketing world, the list user never employs a list to ascertain any private information about any of the list's members. He simply utilizes the list to get his mailing to the mailbox of potential customers who remain, in effect, anonymous so far as the list user is concerned.

In these respects, a mailing list is a unique vehicle. It provides means for both mass communication and for individual attention; but the individual attention is provided to the listed person in the form of receiving something he is likely to be interested in, not by disclosing anything about him as an individual. To succeed, direct marketers must deliver their messages to the right prospects. A mailing list is the impersonal aid used to reach that goal.

From all of this you can see that the process itself tends not to endanger personal privacy in any meaningful way - a conclusion which was reached by the Presidential Privacy Protection Study Commission in 1977. However, let us look at the additional steps the direct marketing industry takes to insure that privacy is protected. It is interesting to note that they do these things in their own self interest as well as in the public interest.

First, a mailer obviously has a strong economic incentive not to mail to people who find his mailings annoying and who throw them away unopened. To help reduce unwanted and hence unprofitable mailings, the DMA maintains the Mail Preference Service (MPS), which is widely promoted to the public. MPS provides an individual with a means both to have his name removed from mailing lists or to have his name added to lists in which he may have a particular interest (i.e., sports, camping equipment, books, etc.). Since the inception of this service in 1971, about 495,000 people have asked to have their names added to lists, while about 333,000 have asked to have their names removed. (The add-on service was offered in 1974.)

Next, individual mailers notify their customers that they periodically rent their lists to others having something to offer in which they think their customers would be interested, and give them the opportunity to have their names omitted from such lists if that is their desire. Thus, people can both get off of lists they are already on and avoid getting on lists in the first place.

Finally, DMA has promulgated Suggested Guidelines for Personal Information Protection, a copy of which is attached to this testimony, to provide individuals and organizations involved in direct mail and direct marketing with principles of conduct that are generally accepted and which will help ensure consumer privacy. We believe they are routinely followed in the day-to-day operations of the business community.

It should be noted that no mailing list is conceivable that would be constructed on the basis of unfavorable information regarding the names upon it. Lists that constitute reports regarding the credit status of individuals are, of course, not mailing lists, and, in any event, they are already governed by the Fair Credit Reporting Act. The only consequence of being on a mailing list is that one receives something that he presumably has an interest in. At that point he is free to read it or throw it away as he chooses.

Key to the whole process is the fact that direct marketers limit the collection and transfer of information to direct marketing purposes only.

This has been the longstanding and natural practice of the business community inasmuch as it is only in such uses that the direct marketer has an interest. By limiting the use of data to such commercially routine matters, consumer protection and privacy is not endangered.

Neither DMA nor the business community condones uses of mailing lists which are not compatible with the purpose for which information is collected. Indeed, we believe this precept should be followed by all -- government as well as the private sector. The DMA Guidelines specifically state that mailing lists should be rented for marketing purposes only, and we question the wisdon of government agencies seeking to use them for other purposes. This would tend to undermine public confidence in a socially and economically important process, and possibly improperly invade personal privacy as well.

It is noteworthy that the United States Supreme Court has held that the First Amendment protects not only a speaker's right to communicate, but also a listener's right to hear. Thus, when balancing the various delicate rights of individuals, the judiciary has fully protected all forms of commercial speech, including those uniquely employed by direct marketers.

This brings us to our concern with the efforts of the IRS to use mailing lists as a means of catching non-filers. We do not question the legitimacy of what the IRS is trying to do -- to deal with the very intractable problem of finding people who seek to be invisible and simply never file tax returns. And we appreciate the need the IRS has to find more effective means to solve this problem.

On the other hand, we have serious reservations about the use of any mailing lists, whether they are compiled from public or private sources. We believe that the use of lists for purposes other than for which they were compiled raises serious privacy questions and could jeopardize the effectiveness of a major form of marketing as well as other important activities dependent on public support.

We have met at length with IRS Commissioner Roscoe Egger, and have maintained a continuing dialog with key IRS staff, in an effort to further an understanding of each other's point of view.

IRS officials claim they are only using lists based on public information. They draw a distinction between lists compiled from public sources and lists compiled from private sector sources, such as a company's customer list. However, our concern is with the public's perception of what the IRS is doing. The public will never make fine distinctions between the sources of mailing lists. They will simply perceive that the Internal Revenue Service is using mailing lists to track people down, and in the minds of many, to harass them.

They will also come gradually to understand that the IRS is using Census data to overlay on the basic mailing lists. We believe that an inevitable consequence of such a chain of events, carried out broadly and nationally, would be a tendency on the part of people to view this as one more invasion of privacy; one more step in government intrusion into their lives.

They would gradually tend to conclude that it is not a very good idea to have your name on a mailing list. And next, perhaps, that is it not even a very good idea to be a voluntary participant in market research. And next, perhaps, that it is not even a very good idea to be a voluntary participant in filling out a Census questionnaire.

These are subjective judgments as to what the consequences of the IRS action would be. However, the more we analyze the possible consequences of IRS's use of mailing lists, the more convinced we become of the wisdom of not using data for a purpose different from that for which it was collected, or from that for which the person from whom it was collected expected it to be used.

This is a fundamental principle in direct marketing, and it is a generally followed practice in government. Currently, the government maintains massive "lists" which can only be used for the purposes for which they were compiled, with certain specific exceptions. The IRS, or any other agency, cannot use individual census forms to track down tax cheaters, nor can they use Social Security data.

Private sector mailing lists, no matter from which sources they are compiled, are used for marketing purposes -- and in no case are used to discover specific data about specific persons. The IRS goal is substantially different.

To the best of our knowledge, private sector lists have been used by government in the past primarily to market publications and conferences, and to convey information to specific audiences. For example, the Government Printing Office may rent the subscription list of a business magazine or newspaper to market a financial services publication. Another government agency might rent a list to promote a specific conference or to provide information to the elderly. The Peace Corps might seek a list of college professors as a part of its recruitment efforts.

I think the public understands perfectly well from their experience that up until now all that happens as the result of being on a mailing list is that you get mail. You are either interested in it or you are not; you read it or you throw it away, and that is essentially a benign process.

If the public ever comes to feel personal privacy is endangered by this process, they could change their attitude entirely.

Let me show you why we think it is inevitable direct marketing would be harmed with a concrete example. When somebody joins the Literary Guild, we send a welcoming letter stating, among other things, that we periodically make lists of our members available to other publishers and others who may have something of interest to offer. We give them the option of refusing to allow us to include their name on such lists, and if that is their preference, we honor it.

Our members accept that with confidence, and believe exactly what we have said. Most members trust our judgement and do not choose to exclude their names from our lists. But if members came to think that, instead of just renting that list to another publisher who might want to offer him books, we somehow or other permitted the Internal Revenue Service to use it for enforcement purposes, their confidence in us and the entire system would be undermined.

Individual privacy is important to legitimate business people. With that in mind, the business community has done what we think is an effective job in seeing to it that consumer privacy is maintained. We believe the IRS has an obligation to do the same. Should any questions concerning these matters arise, now or in the future, DMA will be pleased to offer its assistance.

Senator COHEN. We stand adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned, subject to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

WILLIAM V. ROTH, JR., DEL., CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, D.C. 20510

SUBCOMMITTEE
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SUSAN M. COLLINS, STAFF DIRECTOR

April 25, 1984

The Honorable Roscoe L. Egger, Jr.
Commissioner
Internal Revenue Service
1111 Constitution Avenue
Washington, D.C. 20224

Dear Commissioner:

On Wednesday, May 23, the Senate Subcommittee on Oversight of Government Management will hold a hearing on the transfer of data between the Internal Revenue Service and other government agencies and the private sector. Specifically, the hearing will address the IRS's transfer of information to federal and state government agencies to verify eligibility for benefits and the collection of data by the IRS from private sector sources to identify cases of non-filing or underreporting of income by taxpayers. The hearing will begin at 9:30 a.m. in room 342 of the Dirksen Senate Office Building.

Accordingly, I ask that you or the appropriate official of the IRS testify as the first witness on the IRS's views concerning these issues. Specifically, it would be most useful to the Subcommittee if your testimony would focus on the following issues:

(1) a description of the IRS's study on the use of commercial lists to identify non-filers, including the purpose of and authority for conducting the program, the amount, types, and sources of information used by the IRS in the project, and the current status of the project;

(2) a description of any other program now being conducted or planned by the IRS involving the collection of data from private sector or government sources to identify non-filers or underreporters of income;

(3) a description of all programs now being conducted or planned, both statutorily and administratively authorized, in which the IRS transfers or will transfer taxpayer or tax return information to other federal or state government agencies or to the private sector;

(4) a description of all instances in which the IRS has agreed, within the past five years, to provide names and addresses of taxpayers to government agencies;

(5) a list of all instances in which the IRS has agreed, within the past five years, to forward letters to taxpayers on behalf of another government agency;

(6) the IRS's position on the transfer of tax return information or taxpayer information to other government agencies for use in verifying eligibility for government benefits; in particular, please provide your views concerning the effect of such transfers on the level of voluntary compliance with our tax laws; and

(7) the procedures used by the IRS to ensure the confidentiality of information distributed to federal or state agencies for eligibility verification purposes.

I request that you provide me with three copies of your statement no later than Friday, May 18. Fifty additional copies should be provided on May 22 for distribution at the hearing. Please have your statement delivered to the Subcommittee on Oversight of Government Management, Room 326 of the Dirksen Senate Office Building.

I appreciate your assistance to the Subcommittee in its examination of these issues. If you have any questions, please have your staff contact Mary Gerwin of the Subcommittee staff at 224-5538.

With best wishes, I am

Sincerely,

Bill Cohen

William S. Cohen
Chairman

WSC:mbg

RESPONSE TO QUESTION 1

COMMISSIONER OF INTERNAL REVENUE
Washington, DC 20224

JAN 11 1984

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
326 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letter of December 21 requesting information about the study that the Service is conducting to determine the feasibility of using commercial lists to identify individuals with a tax liability who do not file tax returns. Our answers to your questions are as follows:

(1) The purpose of the commercial list project is to determine if commercially compiled general lists of households could be used effectively to identify individuals who are required to file income tax returns but have failed to do so.

(2) Authority for conducting this study is contained in Section 7601(a) of the Internal Revenue Code which states as follows: "The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed."

(3) The present status of the study is that a commercial list tape file was received on December 7, 1983. The file contains information on about two million households with estimated annual income of $10,000 or more in four districts: Milwaukee, which services the entire state of Wisconsin; Indianapolis, which services the entire state of Indiana; Reno, which services the entire state of Nevada; and Brooklyn, which services all of Long Island and the boroughs of Brooklyn and Queens. The project is a few weeks behind schedule, but we are hopeful that we will still complete the study by May 1985, as currently scheduled. Enclosure 1 is a copy of the project prospectus which includes a timetable for completion of significant action items; items 1-8 have been already completed.

As noted in the prospectus, six randomly selected districts were originally designated for the test. However, two of the districts, Cheyenne and Cleveland, were omitted from the study because of contract cost constraints. We believe that the results of testing the four districts will be sufficient to meet study objectives.

(4) Enclosure 2 is a copy of the purchase order we signed with a GSA approved contractor, Dunhill of Washington, to provide a listing of households on magnetic tape. Enclosure 2 also includes purchase order modification 1, adjusting the unit price.

(5) A description of the information contained in the list purchased from Dunhill of Washington is contained in Enclosure 3.

We do not know the sources from which Dunhill of Washington, or their suppliers, developed the list which we received. Generally, list companies develop their lists from information contained in public records.

(6) Although we do not know the sources of data on the commercial list we received, the information is a combination of specific data and estimates. Names of the heads of households, addresses and telephone numbers are, of course, specific and, based on preliminary examination of limited data, seem to be consistent with local telephone directories. The vendor has advised us that the income information in particular is based on estimates, as anticipated by our work statement.

(7) Regarding verification of data contained in the commercial list, the study is to determine if the commercial list data is useful in identifying people with a tax liability who do not file tax returns. In conducting the study, we will attempt to match commercial list data with IRS files. Samples of households for which a tax return for 1982 was apparently not filed, or which cannot be found in IRS files, will be selected for study. A total of 1,200 households per study district will be selected. At the conclusion of the study, data obtained during the study (e.g., returns obtained or the fact the taxpayer was not required to file a return) will be compared with commercial list data to measure the accuracy of list data and usefulness of the list in identifying individual nonfilers. In no instance will tax be assessed based on information contained in the list. All tax collection activities will be based on contacts with taxpayers.

(8) We plan to contact persons identified as potential nonfilers by sending them a letter. Enclosure 4 is a draft copy of the letter; exact wording has not yet been determined. People to whom a letter is sent but who do not respond adequately may also be contacted in person.

(9) By the completion of the project, we plan to destroy all study data which is not related to potential nonfilers. Data pertaining to potential nonfilers who were not sampled as part of the study will be retained pending the outcome of the study. If results show that commercial list data cannot be used effectively to identify nonfilers, these files will also be destroyed. Data pertaining to the several thousand sample cases included in the study will be retained as a part of our regular research files.

(10) The commercial list data procured from the vendor and other data generated during the study concerning the tax liability of individuals will be accorded the same safeguards as is other tax return information covered by Section 6103 of the Internal Revenue Code.

(11) There are no plans to expand this study to include additional districts.

(12) There are no plans to expand this study to identify underreporters.

Please let me know if I can be of further assistance to you in this matter or have your staff contact Deputy Assistant Commissioner Walter Bergman. Walt can be reached on (202) 566-9495.

With kind regards,

Sincerely,

Roscoe Egger

Enclosures

Enclosure 1

Project Prospectus

See IRM 125(15) or IRM 125(32) for instructions.

Registry Number *(Assigned at N.O.)*

☐ *(N.O. Use)*

Form Preparation Date: July 21, 1983

Project Title: Feasibility of Using Commercial Lists to Identify Individual Nonfilers

Originating Office

Region:

S.C. or D.O.: N.O.

Function Symbols: PM:PFR:R

Project Manager *(Name, Title, Phone)*: Sheldon Pox, Statistician, (202) 566-3955

Productivity Plan Class

☐ Initiative

☐ Accomplishment

☐ Not Applicable

Check if applicable:

☐ PEF Request*

☒ Total Project cost greater than $100,000*

☑ RDS Project Number ____________

☐ MGS Request

*Detailed Project Plan must be attached, in addition to the summary on this form.

☐ Detailed Project Plan on file at ____________

Estimated Project Costs

a. Currently Funded Costs $ 777,000

b. Additional Out-of-Pocket Costs $ ____________

Total $ 777,000

c. Amount requested from PEF $ ____________

d. (PEF FY ____________)

(N.O. Use)

Proposed Project Starting Date: December 1982

Proposed Completion Date: May 1985

Project Summary: (Include what is proposed, background, what will be accomplished, procedures to be used, schedule, costs and benefits.)

The study involves a test to determine the feasibility of using commercial lists to identify individual nonfilers not currently identified through programs such as the information reporting program (IRP). If it appears to be feasible and cost-effective, criteria will be developed for using commercial lists as part of an operational program to identify and pursue nonfilers.

The Planning Council approved the concept of using commercial lists on November 2, 1982 and requested that a proposal for a pilot test be submitted for approval by the Deputy Commissioner.

Concurrence *(Optional)*: Name, Title and Signature

Date

Concurrence *(Optional)*: Name, Title and Signature

(signed) James I. Owens

AUG 1 1983

Date

Project Approval *(See IRM 125(15))*: Name, Title and Signature

James I. Owens, Deputy Commissioner C:DC

Date

PEF Funding Approval (See IRM 125(32)): Name, Title and Signature

Prospectus

Feasibility of Using Commercial Lists to Identify Individual Nonfilers

I. Background

The Service now uses third party reports such as wage statements and other information returns, which are required by law to be filed with the Service, to develop leads on individual nonfilers. There are some sources of income, however, for which information returns are not required to be filed or for which information return filing compliance is poor. Thus, there are gaps in the Service's ability to identify individual nonfilers.

To help close the gap, the Service might consider the use of commercial lists to develop nonfiler leads. Commercial lists are comprehensive lists of households (some lists also cover business establishments) developed by private companies from sources such as telephone directories and state automobile registration lists. Such lists covering the individual income tax area may contain an estimate of household income, based on an analysis of personal consumption indices such as automobile ownership, real estate transactions, and published census data.

The Service uses commercial lists now, but only for specialized purposes such as identifying highway use tax cases. The Service has not attempted to use commercial lists to generally identify individual nonfilers.

On 11/2/82 an issue paper was presented to the Planning Council, and they approved the concept of using commercial lists, requesting that a test be designed to provide information on the usefulness of these lists.

II. Statement of Objective

The objective of this study is to determine the feasibility of using commercial lists to identify nonfilers currently not being identified through programs such as the information reporting program (IRP).

In order to accomplish this objective it will be necessary to determine the accuracy with which commercial lists indicate income and other pertinent data and the degree to which the lists can be matched to IRS files.

If it is determined that the use of commercial lists is feasible and practical, then the study will also develop criteria for using lists as part of an operational program.

III. Prospective Actions and Action Criteria

The study group plans to obtain a representative commercial list and to match data from that list and from IRS files (TY 1982 returns) to identify households for which there is apparent income but none is reported. Apparent nonfilers will be investigated and checksheets completed to show the results. Results will be tabulated and analyzed by the study group and a report on the findings, including recommendations for future actions, will be prepared.

Since commercial lists do not contain taxpayer identification numbers (TIN's), it will be necessary to develop TIN's for the commercial list cases so that list information can be compared with information contained in IRS files. Computer TIN perfection procedures as well as service center research procedures will be used. For cases where a TIN is developed, potential nonfilers will be identified, and samples of these will be pursued. In addition, samples will also be pursued for cases where no TIN is found.

Regardless of the population for which sample cases are selected, study procedures will be the same. Initially, service center correspondence contact will be made. Cases which cannot be resolved by correspondence will result in leads being issued to district offices. For all sampled cases, checksheets will be completed and tabulated.

It is proposed that the test involve six randomly selected districts. Of these six districts, one will be designated for pre-testing Work in the pre-test district will commence several months earlier than in the other test districts and will be monitored closely by the study group members through on-site visits. These early findings will be used to assure that procedures are working as intended and will allow for adjustments to be made, as necessary, before proceeding with this study in the remaining test districts.

IV. Study Organization and Plan

The study group will consist of representatives from Collection, Returns Processing and Accounting, Support and Services, Computer Services, and Research and will be chaired by the latter. Personnel from other functions will assist in the study as needed.

	ACTION	COMPLETION DATE
1.	Formation of study group	Completed
2.	Develop draft prospectus	Completed

3.	Submit requisition for commercial list.	Completed
4.	Submit required RDS for TIN perfection of commercial list data, matching to the IMF, and sample selection.	Completed
5.	Approval of study prospectus.	August 15, 1983
6.	Select districts to be tested and designate one district for pre-test	August 15, 1983
7.	Award contract for commercial list.	September 30, 1983
8.	Receive tape file of commercial list from contractor.	November 1, 1983
9.	Reformat tape (if required) and perform computer TIN perfection in order to associate TIN's with the cases.	January 1, 1984
10.	Extract from the IMF cases corresponding to those which have been TIN perfected.	February 1, 1984
11.	Match the computer TIN perfected commercial list cases with the cases extracted from the IMF and identify potential nonfilers.	February 15, 1984
12.	From the files of potential nonfilers, select samples of cases to be pursued. (For each of the six study districts, there will be approximately 400 cases. It is anticipated that half of these cases will be resolved through service center correspondence and that the remaining half will then be sent to the districts for resolution. Except for the pre-test district, however, cases will be held until after step 19 below.)	March 1, 1984
13.	For cases which have not been computer TIN perfected, select a stratified sample (weighted toward larger income cases) of 20,000 cases per study district. (Except for the pre-test district, however, cases will be held until after step 19 below.)	March 1, 1984

Note: Steps 14-19 pertain only to cases identified for the pre-test district.

14.	Prepare and issue test instructions for service center personnel and for Collection field personnel, including checksheets.	March 1, 1984

15.	For the 20,000 non-computer TIN perfected cases, perform service center research using the Key Index File (KIF) to obtain TIN's.	May 1, 1984
16.	Where service center TIN perfection is successful, identify potential nonfilers and select a sample of approximately 400 cases. For each sampled case, initiate a request to NCC for data from the Information Return Selection System (IRSS) file.	May 15, 1984
17.	Where service center TIN perfection is not successful, select a sample of approximately 400 cases.	May 15, 1984
18.	Conclude all correspondence contacts and complete issuance of leads to Collection field personnel.	July 1, 1984
19.	Monitor-pre-test processing through on-site visits; evaluate preliminary data; determine if test will proceed without adjustments and/or recommend necessary adjustments.	July 1, 1984

The following steps assume continuance of the test.

20.	Submit RDS for transcription and tabulation of checksheets.	July 1, 1984
21.	Issue test instructions to the remaining test service centers and districts.	July 1, 1984
22.	For the non-computer TIN perfected cases in the remaining five study districts, perform service center research using the Key Index File (KIF) to obtain TIN's.	August 1, 1984
23.	Where service center TIN perfection is successful, identify potential nonfilers and select a sample of approximately 400 cases per district.	August 15, 1984
24.	Where service center TIN perfection is not successful, select a sample of approximately 400 cases per district.	August 15, 1984
25.	Monitor results of Collection field investigations in the pre-test districts; determine adjustments, if needed. Conclude all correspondence contact and issue leads to Collection field personnel.	November 1, 1984
26.	Determine relationship, if any, between test cases and IRP cases; tabulate data for analysis.	November 30, 1984

27.	Process nonfiler leads in the test districts and complete checksheets.	February 15, 1985
28.	Transcribe and tabulate checksheets.	March 31, 1985
29.	Evaluate data and prepare report on findings including development of criteria for implementation of commercial list data into operational programs to identify nonfilers.	May 31, 1985

V. Data Plan

The study will use extracts from a commercial list containing names of individuals in six districts, randomly selected, and for each of these individuals will attempt to develop TIN's so that a match can be made with IRS files. Both computer TIN perfection techniques as well as service center research TIN perfection techniques will be used.

After TIN perfection, the commercial list data will be matched against data from the Individual Master File (IMF) to identify and select samples of cases which appear to have income, as indicated by the commercial list, but have not met filing requirements. These will be investigated as potential nonfilers. In addition, samples of cases for which no TIN can be found will be investigated.

Preliminary data detailing the results of processing from a single designated pre-test district will be monitored closely by study group members in periodic on-site visits to determine if procedures are adequate and if continued testing is warranted. If warranted, the study will continue in the remainder of the test districts. Results will be analyzed and, if the approach is feasible and cost beneficial, will then be used to develop criteria for the use of commercial lists in operational programs to identify nonfilers.

VI. Methodology

Cost benefit analysis of data generated from completed checksheets will be performed by the study group. Statistical techniques will be used to insure valid samples and reliable estimates.

VII. Estimated Project Costs

Costs for the study are estimated to total $777,000 including the resources needed in the National Office to plan and oversee the study and to analyze the results. By activity, the costs are as follows:

Collection - National Office oversight and field resources to investigate a sample of 7,200 cases (includes service center correspondence and district leads)	$ 464,000
Returns and Information Processing - Support activities in the service centers.	$ 33,000

Computer Services - Processing and matching commercial lists.	$ 30,000
Support and Services - Processing and tabulating checksheets.	$ 125,000
Planning, Finance and Research - National Office oversight.	$ 25,000
Obtain list from a vendor.	$ 100,000

We expect contracting funds to be provided from the FY83 Research and Development Fund.

VIII. Post-Completion Evaluation Plan

No post-completion evaluation plan will be prepared at this time.

MARK ALL PACKAGES AND PAPERS WITH CONTRACT AND/OR ORDER NUMBERS

1 DATE OF ORDER 09/27/83
2 CONTRACT NO. *(if any)* GS-00S-56297
3 ORDER NO NO 83-6941 MOD 000
PAGE 1 OF &nopages

4 ISSUING OFFICE
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE
FK

5. ACCOUNTING AND APPROPRIATION DATA 3-1-0591-37-13-2512

6 SHIP TO *(Consignee and Address, ZIP Code)*
IRS, RM 3133
1111 Constitution Avenue Washington DC 20224

VIA Shelly Fox

7. TO CONTRACTOR *(Name, Address, ZIP Code)*
Dunhill of Wash.
1990 M St., NW St. 570
Washington DC 20036

8 TYPE OF ORDER
☐ (a) *Purchase* Reference your

Please furnish the following on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. This purchase if negotiated under authority of

☒ (b) *Delivery* Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9 REQUISITION OFFICE ▶ PM:PFR:R

10 REQUISITION NO./PURCHASE AUTHORITY 0838254Y0

11. F.O.B. POINT Destination

12 GOVERNMENT B/L NO.

13 DELIVERY TO F.O.B. POINT ON OR BEFORE 30 Days ARO

14 DISCOUNT TERMS Net 30

15. SCHEDULE

* See reverse for rejections

NONPAYMENT FOR ADDITIONAL WORK: Any additional supplies or services or a change to work specified herein which may be performed by the Contractor, either at his own volition or at the request of an individual other than a duly appointed Contracting Officer except as may be explicitly authorized in this contract/order, are not authorized and will not be paid for. Only a duly appointed Contracting Officer is authorized to change the specifications, terms and conditions in this contract.

Clause 4 of Terms and Conditions of Purchase Order printed on reverse, is superseded by DISPUTES clause, Federal Procurement Regulations, Temp. Reg. 55, which is incorporated herein by reference.

Item No. (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Unit Price (e)	Amount (f)	Quantity Accepted (g)
1.	Listing of households on magnetic tape (see Statement of Work)			$49,000.00	NOT TO EXCEED	
2.	Layout of geographic areas covered (see attachment A for zipcode layout). A $10,000.00 minimum income cut off. The estimated total volume is 3.8 million names. The income estimates to start at $10,000.00 and run up to $50,000.00 income and over per house-					

16. CLASSIFICATION ☒ SMALL BUSINESS ☐ OTHER THAN SMALL BUSINESS ☐ MINORITY BUSINESS ENTERPRISE

15 (h) Total from continuation pages ◀

SEE BILLING INSTRUCTIONS ON REVERSE

17 SHIPPING POINT

18 GROSS SHIPPING WEIGHT

19 INVOICE NO

20 MAIL INVOICE TO *(Include ZIP Code)*
INTERNAL REVENUE SERVICE, ACCOUNTING SECTION PM:S:N:FA Rm. 6611
1111 Constitution Ave., N.W., Washington, D.C. 20224

NOT TO EXCEED $49,000.00 ◀ 15 (i) GRAND TOTAL

21. UNITED STATES OF AMERICA BY *(Signature)* J J Gallagher Jr

22 NAME *(Typed)* J. J. Gallagher, Jr.

TITLE CONTRACTING/ORDERING OFFICER

ORDER FOR SUPPLIES OR SERVICES 147-1[illegible]-50

STANDARD FORM 147 (REV 2-77)
Prescribed by GSA, FPR (41 CFR) 1-3 605

STANDARD FORM 148 JUNE 1964—FED PROC REG 141 CFR 1-3.605

148-103-10

ORDER FOR SUPPLIES OR SERVICES

2nopaSCHEDULE—CONTINUATION

MARK ALL PACKAGES AND PAPERS WITH ORDER AND/OR CONTRACT NUMBERS

PAGE NO. PAGE 2 OF

DATE OF ORDER 9/27/83

CONTRACT NO. (If any) GS-00S-56297

ORDER NO. NO 83-6941 MOD 000

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY ORDERED	UNIT	UNIT PRICE	AMOUNT	QUANTITY ACCEPTED

hold at $5,000.00 increments per household.

3. See Attachment B, B2, B3, and B4 for magnetic tape format and specifications.

PRICE BREAKDOWN

Base price $15.00/M (M=per thousand names)
Base discount 12%
Net discounted price $13.20/M
Dollar volume discount 10% - Net Price $11.88/M
$11.88/m x 3.8 mm = $45,144.00
(mm = per million)

NOTE -

It has been mutually agreed to by the Internal Revenue Service and the Contractor that if the format as requested is not compatable with the IRS computers, the Contractor will be reimbursed $0.50¢ per thousand for a running fee in lieu of the cost of materials listed in item one.

Signature of Contractor's Representative

______________________ Name

Director of Sales ______________________ Title

TOTAL CARRIED FORWARD TO 1st PAGE →

STANDARD FORM 148 JUNE 1964

Section 1.0: Statement of Work

Background

The Internal Revenue Service wishes to determine if it is feasible to use commercial list information to identify individuals who do not file required individual income tax returns and who are not detectable through existing operational programs. If it appears to be feasible and cost-effective, criteria will be developed for using commercial lists as part of operational programs to identify and pursue nonfilers.

Commercial lists are comprehensive lists of households developed by private companies from sources such as telephone directories and state automobile registration lists. Such lists contain estimates of household income, based on an analysis of personal consumption indices such as automobile ownership and real estate transactions.

Objectives

The objectives of this project are to determine the accuracy with which commercial lists indicate income and other pertinent tax related data and the effectiveness with which the lists can be matched to IRS files to identify taxpayers who fail to file required individual income tax returns.

If it is determined that it is feasible and practical to use commercial lists to identify nonfilers of tax returns, then the study will also develop criteria for using lists as part of a nationwide operational program.

Product and Scope of Work

The product to be delivered will be a listing of households (on magnetic tape) containing the name of the head of the household, the residential address (including the Zip code), an estimate of annual household income and the number of people in the household. The list should contain only households for which there is an estimate of annual income of $10,000 or more. If other information concerning the household is available it should be included. Other information may include, but not be restricted to, telephone numbers, the head of household's occupation, age and length of residence, whether the dwelling is single or multiple occupancy and whether it is owned or rented, etc.

The list should be nationwide in scope and should contain at least 50 percent of the households in at least 70 percent of all states, including all of the nine most populous states (as specified in data published by the Bureau of the Census for 1980 or later). The initial purchase under this contract will be for the portion of the list in Zip code areas listed in Attachment A; it is desired that income estimates should be for the 1982 calendar year but estimates based on 1980 Census data are acceptable. The vendor should retain a copy of the file for the remainder of the country as established at the time of this procurement. If a decision is made by the IRS to expand the study, additional portions of this list will be purchased; geographic and other characteristic parameters will be designated at that time.

Data contained in the list should be timely. It is preferred that at least 90 percent of the addresses and income estimates should have been updated during the preceding 12 months.

The list is to be delivered on magnetic tape conforming with the format and specifications in Attachment B.

Within 30 work days after receiving the list, IRS will verify that the tape is in conformance with the specifications and contains the appropriate number of records.

ATTACHMENT A

ZIP CODE AREAS

Wisconsin (entire state)
49936
53001 thru 54986

Indiana (entire state)
46001 thru 47997

Wyoming (entire state)
82001 thru 83128

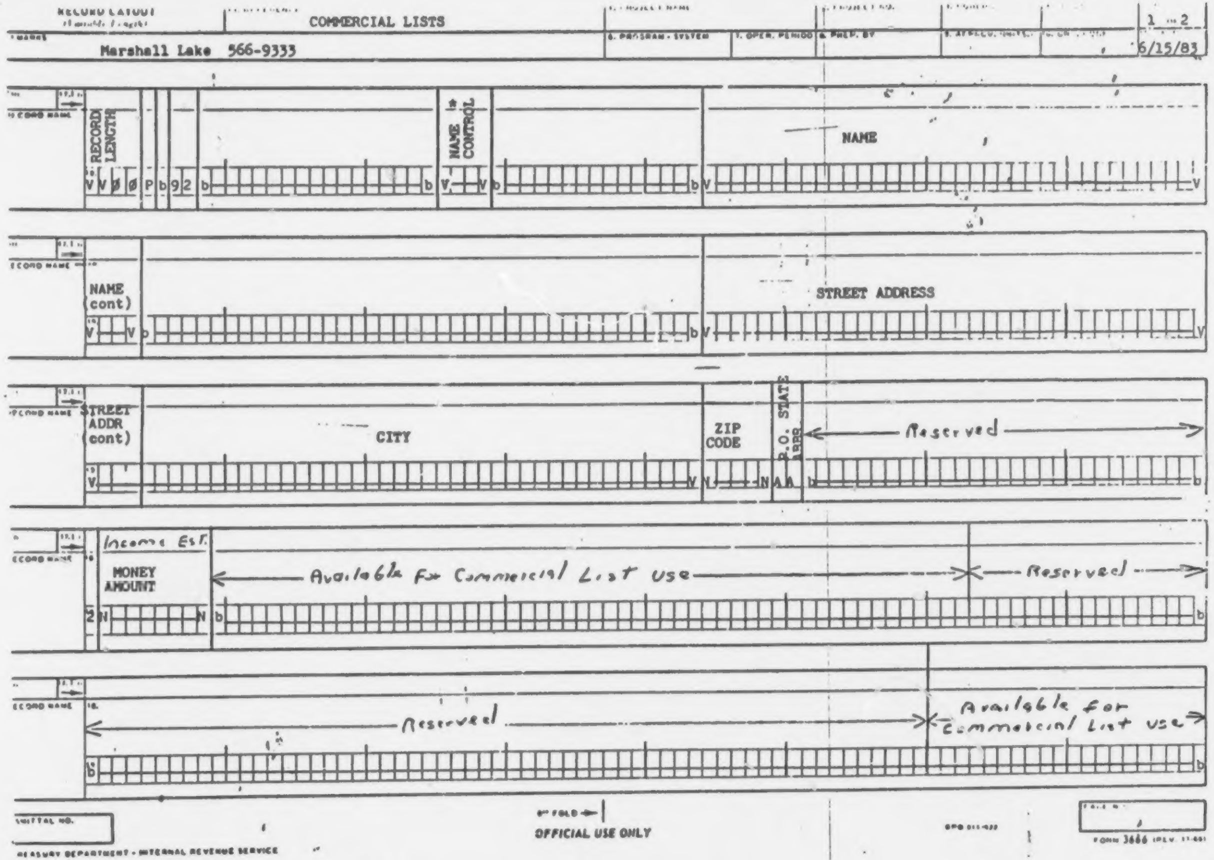
Nevada (entire state)
89001 thru 89836

New York (following zip codes only)

06390			11001	thru	11050		
11101	thru	11436			11501	thru	11598
11600	thru	11697			11701	thru	11980

Ohio (following zip codes only)

43009		43044		43047		43060
43070		43072		43078		43083
43084		43310		43311		43316
43318		43319		43321		43323
43324		43326	thru	43331		43333
43336		43340		43343		
43345	thru	43348		43351		
43357	thru	43699		43710		43713
43716		43718		43719		43736
43744		43747		43752	thru	43754
43757		43759		43784		43786
43789		43793		43804		43825
43832		43837	thru	43840		
43901	thru	44999		45302	thru	45304
45306		45308		45310		45313
45317		45328		45329		
45331	thru	45334		45336		45340
45346		45350	thru	45353		45358
45360		45362		45363		45365
45380		45382		45388	thru	45390
45730		45734		45774		
45801	thru	45899				



RECORD LAYOUT

COMMERCIAL LISTS

Marshall Lake 566-9333

1 of 2

6/15/83

RECORD LENGTH

V V 0 0 P b 9 2 b

NAME CONTROL *

NAME

NAME (cont)

STREET ADDRESS

STREET ADDR (cont)

CITY

ZIP CODE

P.O. STATE ABBR.

← Reserved →

Income Est.

MONEY AMOUNT

← Available For Commercial List use → ← Reserved →

← Reserved → ← Available for Commercial List use →

OFFICIAL USE ONLY

TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

FORM 3666

*First four letters of the last name. No special characters other than hyphen.

ATTACHMENT B

RECORD LAYOUT (Variable Length)

COMMERCIAL LISTS

Marshall Lake : 566-9333

6. PROGRAM - SYSTEM

7. OPER. PERIOD

8. PREP. BY

2 . 2

6/15/83

RECORD NAME

←Available for Commercial List Use→

END OF RECORD

b b

RECORD NAME

RECORD NAME

RECORD NAME

RECORD NAME

TRANSMITTAL NO.

TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

OFFICIAL USE ONLY

FORM 3666 (REV. 11-75)

COMMERCIAL LISTS

Marshall Lake 566-9333

1 1

6/16/83

ADER BEL	1 H D R	HEX 'CO'	VOLUME SERIAL NUMBER V V	b b	REEL SEQUENCE NUMBER N N	0 5 0 9 0 1 0 0 0 0	CREATION DATE (YYDDD) N N	b b 4 0 5 0 1 1 2 0 0 0 b	SCRATCH DATE (YYDDD) b N N	b b

AILER BEL	END OF FILE IND. V V	HEX 'CO'	REEL BLOCK COUNT N	REEL RECORD COUNT	REEL HASH TOTAL N	FILE BLOCK COUNT V	b b

OFFICIAL USE ONLY

TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

FORM 3666

NOTES

RECORD LENGTH - should always contain hex 01A40000
NAME CONTROL - first four positions of the last name as contained in PAYEE NAME
END OF FILE IND. - should contain "1EOR" unless it is the last reel of the file in which case it should contain "1EOF"
FILE BLOCK COUNT - should contain a numeric block count for the last reel only, for all other reels this field should contain blanks

TAPE SPECS:

6250 BPI density
9 track
420 character record length (per household)
8000 max block size
EBCDIC mode
even parity

unused fields should be blank filled

positions 250 through 303 and 381 through 420 of each record may be used for other data (i.e., commercial list data such as the number of people in the household, head of household's occupation, age and length of residence, telephone numbers, etc.).

If there are any questions you may contact Marshall Lake or Diane Grothman at 566-9333.

MARK ALL PACKAGES AND PAPERS WITH CONTRACT AND/OR ORDER NUMBERS

1. DATE OF ORDER [illegible]	2. CONTRACT NO. *(if any)* [illegible]	3. ORDER NO. [illegible]	PAGE 1 OF 1

4. ISSUING OFFICE
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE
Contract and Procurement Branch, Rm. 1320
1111 Constitution Ave. NW. Washington, D.C.

5. ACCOUNTING AND APPROPRIATION DATA
[illegible]

6. SHIP TO *(Consignee and Address, ZIP Code)*
Internal Revenue Service, 1111 Constitution Ave. NW
Room 3137 . Washington, D.C. [illegible]

VIA
Shelly Fox
Room 3137

7. TO CONTRACTOR *(Name, Address, ZIP Code)*
[illegible] of Washington
Suite 570
[illegible] M St., N.W.
Washington, D.C. [illegible]

8. TYPE OF ORDER
☐ (a) *Purchase* Reference your________

Please furnish the following on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. This purchase if negotiated under authority of________

☑ (b) *Delivery* Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. REQUISITION OFFICE ▶ [illegible]

10. REQUISITION NO./PURCHASE AUTHORITY
[illegible]

11. F.O.B. POINT Destination	12. GOVERNMENT B/L NO.	13. DELIVERY TO F.O.B. POINT ON OR BEFORE [illegible]	14. DISCOUNT TERMS NET 30

15. SCHEDULE

* See reverse for rejections

Item No. (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Unit Price (e)	Amount (f)	Quantity Accepted (g)

NONPAYMENT FOR ADDITIONAL WORK: Any additional supplies or services or a change to work specified herein which may be performed by the Contractor, either at his own volition or at the request of an individual other than a duly appointed Contracting Officer except as may be explicitly authorized in this contract/order, are not authorized and will not be paid for. Only a duly appointed Contracting Officer is authorized to change the specifications, terms and conditions in this contract.

Clause 4 of Terms and Conditions of Purchase Order printed on reverse, is superseded by DISPUTES clause, Federal Procurement Regulations, Temp. Reg. 55, which is incorporated herein by reference.

Modification No. 1 is issued to make the following changes.
Price Breakdown now reads as follows:

Base Price $30.93/M (M=per thousand names)
Base discount 12%
Net discounted price=$27.22
Dollar Volume discount 10%=$2.72
Net price=$24.50/M

$24.50/M X 2.MM= $49,000.00
(MM=per million)

16. CLASSIFICATION ☑ SMALL BUSINESS ☐ OTHER THAN SMALL BUSINESS ☐ MINORITY BUSINESS ENTERPRISE

15. (h) Total from continuation pages ◀

SEE BILLING INSTRUCTIONS ON REVERSE

17. SHIPPING POINT

18. GROSS SHIPPING WEIGHT

19. INVOICE NO.

20. MAIL INVOICE TO *(Include ZIP Code)*
INTERNAL REVENUE SERVICE, ACCOUNTING SECTION [illegible], Rm. 6[illegible]11, Wash. D.C. [illegible]
1111 Constitution Ave., N.W.

15. (i) ◀ GRAND TOTAL

21. UNITED STATES OF AMERICA
BY *(Signature)* ▶

22. NAME *(Typed)*
J.J. Gallagher, Jr.
TITLE: CONTRACTING/ORDERING OFFICER

ORDER FOR SUPPLIES OR SERVICES 147-107-50
G.

STANDARD FORM 147 (REV. 2-77)
Prescribed by GSA, FPR (41 CFR) 1-3 605

Enclosure 3

Information About Households Contained in the Commercial List Delivered by Dunhill of Washington

1. Surname of head of household.
2. Residential address, including ZIP code.
3. Estimated annual income, in thousands.
4. Whether the residence is single or multiple family.
5. Telephone numbers, not including area code.
6. Given name of as many as five household members.
7. Date of birth of each household member.
8. Sex of each household member.

Enclosure 4

[illegible]

We have no record that you have filed a 1982 Individual Income Tax Return. (Form 1040; 1040A or 1040EZ).

If you are required to file the form, but have not done so, please complete the form and any required schedules, and return it to us within the next thirty days.

If you were not required to file an Individual Income Tax Return, please explain why on the back of this letter and return it to us.

If you have already filed the return, please give us the information below:

Name and address on the return

Social Security Number used on the return

Date filed

Office where filed

If tax paid by check, show endorsement date
and number stamped on back of check

A pre addressed envelope is enclosed for your convenience.

Thank you for your cooperation,

RESPONSE TO QUESTION 2

Federal/State Exchange
Task Force Report
Executive Summary

The Issue

The Service has determined that a review of the Federal/State exchange program is necessary in light of changing tax attitudes and budgetary constraints. The working group has interviewed field officials and State tax agency personnel. In addition, all regional, liaison district, and service center offices were sent a questionnaire dealing with various aspects of the program. The focus has been on more effective Service use of already available State information.

Findings

During the course of this limited review we found that the Service may be able to make better use of State information. In addition we found that there may be additional information available from the States which we are currently not receiving. However, we did not identify any large information sources which could give us substantial leads on non-filers and underreporters.

Recommendations

- The Service should compile a detailed inventory of available State information. If feasible, the National Office should use the most effective means of making this inventory available to all functions. If possible, the State tax agency should serve as the liaison with the other State agencies.
- Once an inventory of State information is available, the Assistant Commissioners (Examination) and (Criminal Investigation) should pursue development of unreported income projects.
- The Assistant Commissioners (Collection) and (Examination) should undertake a joint study to determine the value of State information as a source of Federal non-filer leads.
- The Service should attempt to foster automated processing of State information through matches without TIN's, assisting the States to develop data bases compatible with IRS processing and by encouraging States to adopt the EIN for BMF type taxpayers.
- State information should be forwarded to service centers for the initial evaluation of usefulness to the IRS. However, if the service center cannot work the State information, direct receipt by the district is justified.

- Service centers should process State information, especially Examination cases, because of a more efficient operation (lower cost) and a more productive return (higher net yield). However, cases that cannot be processed at the service center should be sent to the districts.

- The current policy statements on audit cycles (P-4-22 and P-4-52) should be clarified in regard to using State information results outside of normal examination cycles. Policy Statement P-4-22 should be clarified to encourage service center examination outside the normal cycles in certain appropriate instances. Districts should observe the normal cycles unless unusual circumstances are present. Policy Statement P-4-52 should be reviewed to determine if estate tax examinations can be undertaken closer to the 36 month statute of limitation period.

- The Service should explore the possibility of revising those implementing agreements with States that provide examination results to include a provision that provides for an "early warning" system in large dollar deficiency cases under examination by the State.

- The Service should design a system to track a limited sample of each State's examination cases to identify whether or not they were used and why, and to determine their revenue value. The system should last two years unless it is determined essential to continue it.

- The Service should prescribe a priority for and placement of State examination results within the overall examination plan.

- If the statistics warrant it, the Service should propose legislation to modify IRC 6501 to extend the statute of limitations to a prescribed period (to be determined) after the results of State examinations are received or after the State appeal closes.

- The disclosure officer's role should be that of primary liaison with the State tax agency in obtaining State developed compliance information. The disclosure officer should have primary responsibility for oversight of the exchange program as well.

- A committee, including the disclosure officer, a service center representative, and Compliance managers, should be formed in each district and region to compile the inventory recommended previously and to develop new and expanded uses of State information.

- The National Office and regional Compliance functions should set expectations for the use of State information.

- The Service should attempt to be as responsive as possible to the needs of State tax agencies for Federal tax information.

Preface

The Federal/State Exchange Task Force, using the information obtained during visits to four IRS district offices and three State tax agencies as well as responses to questionnaires sent to all regional, service center, and district offices, has completed its study. The focus of the study was on how the Service can better utilize information already available in the States.

This report reflects the observations, comments, and recommendations of the Task Force.

All recommendations adopted by the Control Group may not be implemented by some districts because one or more of the following circumstances may exist in that State:

1. The State does not maintain the information.
2. The State may be prohibited from disclosing the information because of its confidentiality laws.
3. The State may not maintain the information in a format compatible with the needs of the Service.

Policy Statement P-1-1 states in part:

> "Since compliance with Internal Revenue laws cannot be determined solely with reference to information on returns and documents filed with the Service, the Service will obtain information from other sources. However, only information necessary for the enforcement and administration of the tax laws which the Service is authorized and directed to enforce will be sought."

Any additional information that the Service might obtain from the States as a result of the recommendations contained in this report will be collected within the restrictions of this policy statement.

Findings and Recommendations

Objective 1: Identify areas where the Service can better utilize State information.

Recommendation 1

The Service should compile a detailed inventory of available State information. The National Office should use the most effective means of making this inventory available to all functions. If possible, the State tax agency should serve as the liaison with the other State agencies.

Background

The major impediment to using State information is not knowing precisely what information is potentially available from State agencies. Both the Service and State taxing authorities suffer from this shortcoming.

The district offices should collect this information from the States. (Recommendation 1 under Objective 5 has more details on this possible effort.) The district offices should concentrate not just on a mere listing but should develop specific details such as the agency responsible for maintaining the information, the officials responsible for processing and storing the records, the medium of such data whether tape or hard copy, the potential usage based on past experience, and finally any legal impediments to its use.

Once developed, this inventory should be distributed to all functions in the districts, regions, and National Office. The inventory can then act as a basis for further analysis and testing of the data and for development of cooperative efforts using the most beneficial files.

In addition to the potential uses discussed under Recommendations 2 and 3, other uses could be made, for example:

a. Data collection for PM:PFR studies

b. Asset/taxpayer locator information for district office Collection

Recommendation 2

Once an inventory of State information is available, the Assistant Commissioners (Examination) and (Criminal Investigation) should pursue development of unreported income projects.

Background

Most property and business transactions are conducted under State law, so the best place to get related information is from the State. Vast amounts of information (e.g. registrations, permits, licenses, etc.) are available from the States. This information should be analyzed to detect areas of unreported income.

Such leads could include:

a. Indicators - These are leads that may indicate a taxpayer has a business intent such as registering a dump truck or obtaining a license to become a plumber.

b. Sources of possible income - These are leads that show a taxpayer is involved in an activity but may not show amounts. For example, we may have a list of individuals who are working as independent contractors.

3. Specific leads - These are leads that tell us the activity, the payor, and the amount.

Other leads such as expensive car, boat, or airplane registrations would be valuable in documenting asset acquisition and expenditure of funds. These could be of value in ascertaining if unreported income is present.

Some questions must be answered before we get this information. Is the information computerized? Who should develop the screening criteria, and what should be the method of screening? Should the information from several sources be accumulated or screened piecemeal? If the information is not computerized or in proper format, do we want it added to existing transcripts or should we create a new transcript?

Recommendation 3

The Assistant Commissioners (Collection) and (Examination) should undertake a joint study to determine the value of State information as a source of Federal non-filer leads.

Background

There is little information readily available about the use of State information to develop non-filer leads. Most non-filer leads arising from State information come from programs run by Examination. When Examination finds no record of a return, the lead is referred to Collection for a delinquency investigation.

There are procedures in IRM Part V for local returns compliance programs. Some of these programs are based on State information. The results of these programs should be analyzed and disseminated for the use of other regions and districts.

Very little has been done in the area of matching lists of State income tax filers with the IMF. States with an individual income tax routinely match against the IMF, but there is no similar match to determine State filers who did not file a Form 1040. There have also been some State "amnesty" programs in which penalties were forgiven during a set period. We have not made use of this information to detect Federal non-filers. The use of such information, either as a source of return delinquency investigations or as IRP information, should be explored.

Recommendation 4

The Service should attempt to foster automated processing of State information. Approaches could include:

a. Investigating the feasibility of developing a method of systemic matches without TIN's

b. Assisting the States in developing data bases compatible with automated IRS processing

c. Encouraging the States to adopt the EIN for identifying BMF type taxpayers

Background

State records are maintained in numerous formats, both from State to State and among agencies in a given State. One of the major hinderances to the use of State information is the extensive manual research and processing which must be done (often at the district level) to "weed out" unproductive leads. Automation would enhance the use of the State information. Several districts expressed the opinion that increased use of State information should be pursued only if automated processing is possible.

One approach is to develop computer matches based on criteria other than TIN. Most State records (other than individual income tax) are not accessible through the Federal TIN. The Privacy Act, in fact, bars the States from requiring a SSN on certain types of records. Current capabilities do not allow for alpha matches because of cost and inaccuracy. The study group does not know whether usable alpha match routines can be developed but does believe the possibility should be explored.

We should also try to get the States to keep their data in a more usable format. This could include both negotiation and assisting the States in developing new data bases or changing the format of old ones.

We should also encourage the States to use the EIN for business entities. There are no Privacy Act problems, and the advantages to the Service are obvious. There are also advantages to the States, many of which have several identifying systems (e.g. one ID number for unemployment tax and another for income tax). Adopting the EIN would give State agencies easier access to other agencies' data. We believe some States (e.g. New York) are already receptive to this idea.

Objective 2: Determine if information currently being received in district offices can be more effectively utilized at service centers.

Recommendation 1

State information should be forwarded to service centers for the initial evaluation of usefulness to the IRS. However, if the service center cannot work the State information, direct receipt by the District is justified.

Background

The responses to the Federal/State questionnaire indicate that most of the information supplied by States is sent to the district offices. This information is then classified in the RPM area for Examination cases or evaluated by the specific functions for usefulness. There appears to be very little sharing of this information between functions.

If the State information was forwarded to the service centers and processed in the Compliance Division, all of the Compliance functions could have access to the information. With Examination, Collection, and CID Branches under one Division Chief, sharing of the information could be better coordinated and evaluated. This would also assure that the same priority is placed on the processing of this information by all functions.

After evaluation, if possible, the service center should process the State information. Information should be referred to a district office only if it cannot be properly processed at the service center because of its degree of difficulty or its relationship to a specific taxpayer.

Recommendation 2

Service centers should process State information, especially Examination cases, because of a more efficient operation (lower cost) and a more productive return (higher net yield). However, cases that cannot be processed at the service center should be sent to the Districts.

Background

The service center can process information more efficiently at a lower cost because of the grade level of personnel involved. As a result, State information, especially examination results, should be processed in the service center.

Although only a few States send information directly to the service centers, our visits provided indications that those service centers that do receive information produce a higher net yield per return than the net yield for information processed in district offices. Also, even though there is a lack of information on results, indications are that service centers tend to use more of the State information because they apply lower tolerances.

The use of service centers to process State information should result in greater utilization of the information and a higher net yield per return as compared to district office processed information.

Objective 3: Review current IRS policy to determine if different criteria can be applied to State tax information enabling the Service to better utilize State audit cases.

Recommendation 1

The current policy statements on audit cycles (P-4-22 and P-4-52) should be clarified in regard to using State examination results outside of normal examination cycles. Policy Statement P-4-22 should be clarified to encourage service center examination outside the normal cycles in certain appropriate instances. Districts should observe the normal cycles unless unusual circumstances are present. Policy Statement P-4-52 should be reviewed to determine if it should be revised to allow estate tax examinations to be undertaken closer to the end of the 36 month statute of limitation period.

Background

During the visits on this project, one of the primary reasons cited by the field for not using State examination results was because the case was not within the normal IRS examination cycle. Because of a dearth of statistical data to explain nonuse of State-supplied tax audit results, there is no accurate empirical evidence to demonstrate the reasons for not using information received from the State. Despite this lack of evidence, the opinion of field managers is that receipt of State audit results outside the audit cycle - or after the statute expires - is a significant factor in the nonuse of this information source.

Another observation from these visits was the widespread belief in the sanctity of the audit cycle. There was a general reluctance to violate the parameters of the 18-,26-, or 27- month cycles for estate, individual, or corporate tax returns. A quick reading of Policy Statements P-4-22 and P-4-52 reinforces the belief of the inherent importance of the audit cycle.

In order to better use State examination results, IRS policy needs clarification in one case (P-4-22) and possible revision in another (P-4-52). Policy Statement P-4-22 deals with individual and corporate income tax examination cycles and P-4-52 deals with the estate tax cycle. A clearer statement regarding use of State-supplied examinations received outside our audit cycles may increase the use of this information. A review should also be conducted to determine if it would be beneficial for the Service to extend the estate tax examination cycle itself. Since this cycle is less than that prescribed in the Internal Revenue Code Section 6501, depending on the potential value of State estate tax examination results, the Service could enjoy significant revenue and compliance benefits by modifying its policy on estate tax audit cycles.

The Assistant Commissioner (Examination) has already agreed to deal with this matter and is currently working on it.

Recommendation 2

Liaison Districts should attempt to include a provision in all implementing agreements with States that provide examination results whereby the States advise IRS of large dollar deficiency cases (amount to be determined) under examination no later than a prescribed time prior to IRS statute expiration.

Background

It was noted during the field visits that some taxpayers purposely delay State tax proceedings until the Federal audit cycle is exceeded or the statute of limitation has lapsed to avoid the larger tax implications of any corresponding Federal tax issues. One way to address this problem is to negotiate an early warning system where the Service is notified by the State of large dollar deficiency cases that are in their appeals process.

The district office would need to have a solid relationship with the State agency in order to successfully employ such a valuable early warning system. This would be a challenging and possibly difficult agreement to strike since the State may think that any subsequent Service action against the subject taxpayer would jeopardize their case and their collections. Nevertheless, such a notification system holds potentially great benefits for the Service. It should be incorporated in implementing agreements wherever possible. However, specific formal criteria should be developed to clearly outline the dollar deficiency of the case and the timeframe for this notification process. These criteria would probably be better suggested by a national or regional task force rather than each district office and State agency.

In their response to the Federal/State questionnaire, the field indicated that in most cases there was no formal notification process. There was a mixed response as to the desirability of instituting such a system. A number of offices think such a system is unnecessary because the information received would not be valuable.

Recommendation 3

The Service should design a system to track a limited sample of each State's examination cases to identify whether or not they were used and why, and to determine their revenue value. The system should last two years unless it is determined essential to continue it.

Background

The overwhelming majority of field offices responding to the Federal/State questionnaire indicated that they had no system for tracking the value or use of State-supplied information. Effective program management is impaired and may be impossible without knowledge of such basic management information.

There is a widespread belief in the field that the revenue value of State information is insignificant. This belief is based on intuition and not on hard quantitative measures. In order to improve IRS use of and benefit from State information, the Service needs to know what types of State information are more valuable than others. At this point, that knowledge does not exist. Rather, managers are forced to rely on their own speculation, absent solid data, to make assessments of the relative value of different types of State agency information.

In order to improve management of the Federal/State Exchange Program, an information system should be designed to accurately track the use, nonuse (and reasons why), and revenue yield (or loss in the case of nonuse) of all State-supplied information, particularly examination results. This tracking system should be discontinued after two years; however, this sunset provision would be modified at that time if it is determined essential to continue the tracking system.

Recommendation 4

Prescribe a priority for and placement of State examination results within the overall examination plan.

Background

Not all State provided information is currently being used by the Service. The basic reasons for this are: information being received late (out of cycle or statute expired), incomplete information, and a belief that the State information is not of significant revenue value.

Despite the preceding recommendation to develop a tracking system for State information, National Office management (Assistant Commissioner (Examination)) should prescribe a clear priority to certain types of State information and integrate use of this information into the examination plan. This guidance should be clearly explained so that field offices know that given types of State information are to be worked prior to other specified items within the work plans. During our visits we found that some districts afford a high priority to State information while others do not and merely consider it as part of their general work plans.

Currently, an assessment is made locally and the case is worked if it is thought to be sufficiently worthwhile. Since nonuse of State information seems significant, National Office guidance appears necessary. It may not be practical for these guidelines to be highly refined or precise, but they should serve as a clear guide for the field in getting maximum value from State information.

Recommendation 5

Propose legislation to modify IRC 6501 to extend the statute of limitations to a prescribed period (to be determined) after the results of State examinations are received or after the State appeal closes. (This assumes that Recommendation 3 is adopted and the results of data collected there indicate the Service is losing substantial tax dollars because taxpayers are extending cases such that they cannot be worked within the current statute.)

Background

It was learned during the field visits that certain States have statute of limitations for conducting State tax examinations which are different, i.e., longer, than the 3 year Federal statute. Their statute does not expire until a given period after the IRS audit results are received.

No statistics were provided (except for one district office) in response to the questionnaire item on how many State cases were not used because they were beyond the statute. In the one district that provided statistics, 330 cases (22% of total State cases not used) were not used because of an expired statute. Because of the lack of information on this matter, the extent of this problem is not known. Nevertheless, field managers believe that this is one of the main reasons for not using State examination results.

Despite not knowing how many cases have not been used due to statute expiration and what the associated revenue loss is, the Service should consider proposing a change to our statute of limitations in IRC 6501 for initiating examinations as a result of receiving State-initiated tax examination results. A group should be convened to study the feasibility and propriety of such a proposal as well as determining what the time period should be for such a revised statute of limitation.

Objective 4: Determine the role of the disclosure officer

Recommendation 1

The disclosure officer's role should be that of primary liaison with the State tax agency in obtaining State developed compliance information.

Background

It should be the task of the IRS Compliance functions to determine their needs in light of their programs. The disclosure officer should be available to assist the functions in obtaining the necessary information.

Recommendation 2

We recommend that the disclosure officer have primary responsibility for oversight of the exchange program.

Background

As the individual with primary oversight responsibility, the disclosure officer should be knowledgeable about the organizational structure and mechanics of the State tax agencies as well as the Service. The disclosure officer should continue to have an ongoing role in identifying potential areas of exchange. With contacts at both the State and Federal level, the disclosure officer can readily determine the feasibility of any proposed exchange and knowledge of the specific exchange programs allows the disclosure officer to readily make the necessary "need and use" determination. The disclosure officer, working in concert with Service functions, should be involved in the final decision-making process regarding exchanges.

Objective 5: Determine the role of the Compliance managers at all levels.

Recommendation 1

A committee, including the disclosure officer and a representative from the service center that services that district, should be formed in each district and region to administer the exchange program. This committee should:

a. Compile the inventory recommended under Objective 1

b. Develop new and expanded uses of State information

Background

In our visits we found that some Compliance managers are actively involved in developing the Federal/State Exchange. Other managers were unaware of the nature of the items available, the methodology to be used in obtaining information, or the need for a strong information exchange.

The committee should include representatives of all Compliance functions. Representatives (in both the regions and districts) should be from the highest possible management level. The district-level committees would compile the inventory of available State information.

In developing uses for the information, the committees should whenever appropriate involve representatives of the service center compliance and processing functions. Development could take place at both the district and regional levels, but the regional committees should always be involved at least to the extent of sharing information with the districts and the National Office. The National Office should share information among the regions.

Recommendation 2

The National Office and regional Compliance functions should set expectations for the use of State information.

Background

Currently the success of the program varies widely between districts/regions. It succeeds mainly in those areas where Compliance management is committed to and involved with it. If we want a Servicewide program we should establish Servicewide expectations and follow-up on them as a part of routine program reviews.

Objective 6: Determine the role of the IRS in the disclosure of information to State tax agencies.

Recommendation

In recognition of the statutory obligation to share Federal tax information with State tax agencies, the Service should attempt to be as responsive to the needs of these agencies as possible.

Background

The Service should make every attempt to reduce the cost of exchange by advising other States that an individual State has requested certain information. This will give the other States the opportunity to participate in an exchange and divide the cost of research and development among each of them.

Because of the differences in the State tax systems, the exchange programs should remain a decentralized cooperative effort between the districts and State agencies. The district is in the best position to determine the specific needs of the Service and the States. However, the National Office should continue to identify information for the districts which may be useful to the State agencies.

The districts should continue to be innovative in developing new programs to make needed information available to the State tax agencies. However, prior to promoting any program requiring a commitment of resources by the National Office Computer Services function, written authorization must be obtained from National Office Disclosure and Security Division.

RESPONSE TO QUESTION 3

IRS DISCLOSURES TO GOVERNMENT AGENCIES AND THE PRIVATE SECTOR

Disclosures of returns and return information are generally governed by Internal Revenue Code section 6103. The general rule of this section , found at IRC 6103(a), is that returns and return information are confidential and may be disclosed only as authorized by IRC 6103.

There are 29 provisions in IRC 6103 authorizing the IRS to disclose returns and/or return information to other Federal, State or local government agencies. In some instances, the agency is specifically identified by the authorizing subsection. In other instances, the provision does not specify a particular agency, rather it provides for disclosure to agencies for a specific purpose, such as enforcement of Federal nontax criminal laws.

As a result, the IRS makes a variety of disclosures to government agencies for a variety of purposes. State tax agencies receive certain returns and return information for the administration of their State tax laws. The Census Bureau receives certain return information in connection with its structuring of censuses and for conducting related statistical activities authorized by law. The Social Security Administration receives earnings information on Forms W-2 for its administration of the Social Security Act. Child support enforcement agencies receive certain return information to establish and collect child support enforcement obligations.

In addition to these provisions, IRC 6103(c) authorizes disclosures to a taxpayer's designee. With the execution of a written waiver by the taxpayer, the IRS can disclose returns and return information to his or her designee. Government agencies use this provision to secure an individual's authorization to obtain tax information about that person. Such consents are used to obtain information in relation to various government benefits and entitlements. Examples include validating claims or determining eligibility for workman's compensation, hospitalization benefits, eligibility of surviving children for Social Security benefits, and eligibility for student loans, subsidized housing, energy assistance and food stamps.

The private sector uses IRC 6103(c) as well to obtain tax information. For example, an individual will authorize the disclosure of tax information to validate financial statements in connection with applications for consumer credit and mortgages.

The IRS has several current and proposed projects involving IRC 6103(c) disclosures. For example, our service centers provide copies of income tax returns or computer generated literal transcripts of a taxpayer's account to educational lending offices. We estimate the volume of disclosures to be at least 250,000 annually. We are also considering a request by an automobile manufacturer to make ongoing disclosures relative to the eligibilty of disability and early retirees for supplemental retirement benefits. Approximately 86,000 retirees would be involved in this project. Attached is a more detailed description of all identifiable IRC 6103(c) projects which are proposed or underway.

Also included is a desciption of the Supplemental Security Income Project (SSI) with the Social Security Administration. As a result of litigation in the U.S. District Court (Trahan v. Regan) and the subsequent appeal to the U.S. Distict Court of Appeals, this project was never conducted. The court held that the waivers that were secured were technically invalid and that SSA had coerced their execution by SSI recipients and applicants.

There are 9 provisions in IRC 6103 providing for disclosures to the private sector. The principal subsections are IRC 6103(e) and (c) which has already been discussed. Under IRC 6103(e), the Service can disclose returns and return information to individuals with a material interest in the information. Generally, this means the person on behalf of whom the return was filed.

Attached is an outline of the disclosure provisions of IRC 6103. Additionally, we have outlined IRC 6104 and 6110 which provide for public inspection of certain records pertaining to exempt organizations, employee plans, and private letter rulings.

Major Disclosure Programs are as follows:

Program	Information	Authority	Volume (1983)
Federal/ State	Returns and return information limited to certain IRC chapters	IRC 6103(d)	77 million
Tax Checks	Return information for Federal government appointees	IRC 6103(c)	3,900

Nontax Federal Criminal Law Enforcement	Returns and return information	IRC 6103(i)(1), (i)(2), and (i)(3)	58,550
GAO	Returns and return information	IRC 6103(i)(7)	7.5 million
Census, BEA, Treasury for Statistical Use	Return information	IRC 6103(j)	165 million
Child Support Enforcement	Return information	IRC 6103(l)(6)	1.6 million
Address Information for Locating Individuals		IRC 6103(m)(2), (m)(3), (m)(4)	2.3 million

Supplemental Security Income Program

Estimated Volume:

Four million consents obtained the first year and one million to be obtained each year thereafter (continuing).

Authority:

42 U.S.C. 1381 authorizes the Social Security Administration (SSA) to give cash assistance to aged, blind and disabled persons based upon need.

Description:

Eligibility for the Supplemental Security Income (SSI) Program, administered by SSA is determined by the income a person receives and the resources owned. SSA solicited consents from SSI recipients advising them that their failure to submit them could result in a loss of benefits. The purpose of seeking the consents was to identify previously undisclosed ownership of resources, particularly bank accounts, of current SSI recipients. In the future SSA also intended to verify the information provided by SSI applicants. SSA microfilmed the four million consents that were received back from the mailout and provided the microfilm to IRS. A magnetic tape containing the names and SSNs of 2.7 million of those persons was also sent to IRS to match against our Information Return Selection System (IRSS) tape. There were 500,000 matches but no information has been disclosed to SSA as yet.

Update

As a result of litigation (Trahan v. Regan), this program was never carried out.

Washington Police and Fire Departments Retirement and Disability Fund (active)

Estimated Volume:

Unknown (continuing)

Authority:

P.L. 96-122, Police and Firefighters Retirement and Disability Act, requires fund recipients to report until they are 50 years of age anytime they become employed or self-employed and all income resulting from such employment.

Description:

The Fund provides payments to former police and firemen who have retired because of disability. They obtain tax information from IRS in order to verify that Fund recipients are still entitled to disability payments and for evaluation of matters related thereto. On an annual basis they contact Fund participants to determine whether they are employed and to obtain any necessary consents to verify continued eligibility. These consents are sent by the Fund to service centers in the Southeast and Mid-Atlantic Regions to obtain the following information:

1. Gross wages of the employee and by whom paid
2. Gross and Net Income (Schedule C) and name and address of business and principal business activity
3. Total Partnership Income (Schedule E)
4. Gross and Net Income (Schedule F)

Miscellaneous (active)

Estimated Volume:

580,000 annually (continuing)

Statutory Authority:

Various Federal, state and local laws as well as private sector requirements (non-statutory).

Description:

Requesters receive the needed information by obtaining copies, correspondence or testimony.

*1. Applicants for Federal, state and local government or private sector benefit claims. Consents may be submitted by the taxpayer or by the receiving agency. Such information is used for validating claims or determining eligibility for workmen's compensation, hospitalization benefits, loss of income insurance, eligibility of surviving children for Social Security benefits, etc.

*2. Applicants for Federal, state or local welfare subsidies. Consents may be submitted by agencies on behalf of applicants seeking various types of assistance to determine their eligibility or to make adjustments in the level of assistance: subsidized housing, energy assistance, food stamps, etc.

*3. Applicants for loans. To validate financial statements in connection with applications for consumer credit, mortgages, etc.

* Needs based

Miscellaneous (continued)

4. Nontax litigation at Federal, state and local level: to prove loss of income in civil tort cases; to verify ability to pay in divorce matter involving property settlement, alimony, child support, etc.
5. Congressional inquiries. Constituents complain to their Congressional representatives regarding IRS's failure to respond timely to their requests for tax information in connection with nontax matters. The constituents authorize their representatives to receive the information in order to receive it more timely.

Educational Loans (active)

Estimated Volume:

At least 250,000 annually (continuing)

Authority:

P.L. 92-318 and various state laws require the validation of application information prior to extending educational aid to applicants.

Description:

The financial aid offices of various colleges and universities as well as state and local scholarship agencies; request the parents of applicants for educational aid to provide taxpayer consents along with the applications. These consents are used to obtain information from the parents' income tax returns with which to validate student loan, grant and scholarship application information in connection with the determination of their eligibility for educational aid. Consents are submitted by the educational lending offices to IRS service centers which in turn provide copies of income tax returns or computer generated literal transcripts to them.

Combined Federal/State Information Return Reporting Program (active)

Estimated Volume:

In FY 1983 approximately 200 consents authorizing 2,000,000 disclosures; greater numbers of consents expected in subsequent years depending upon local option of Service Center Directors to participate more extensively. (continuing)

Statutory Authority:

Various state laws require the use of Form 1099 information to identify non-filers, verify total income, etc., (for tax purposes) and to identify sources of income in connection with child support matters and in determining eligibility for welfare, etc.

Description:

The program allows Form 1099 filers to meet both Federal and participating state filing requirements by filing their information returns with IRS in magnetic media. Twenty-six of the twenty-eight states with information return filing requirements are current participants. IRS has encouraged filers to participate because both IRS and the states benefit from this method. However, in order for the filer to take advantage of the program it must submit a written consent authorizing the disclosures. Once they have the magnetic tapes they would be transmitted by IRS to the authorized agencies.

Tax Check Program (active)

Estimated Volume:

3,000-4,000 annually (continuing)

Statutory Authority:

IRC 6103(g), Executive Order 10978 (non-statutory), Treasury Department Order 150-87 (non-statutory) and IRC 6103(h)(1)

Description:

IRS provides information concerning prospective Presidential appointees, prospective employees of Federal agencies, nominees for Presidential "E" awards, employees or prospective employees of Treasury Department agencies and certain other persons to the White House, various Federal agencies, or chairmen of Senate committees or subcommittees. Generally, this information is used to supplement investigations concerning the character, loyalty or suitability of such parties for employment. For administrative reasons IRS provides this information in response to taxpayer consents rather than under the authority of IRC 6103(g) or (h)(1). Consents are submitted by the White House or Federal agencies individually or in groups. Requestors are advised by correspondence regarding the results of our tax checks.

General Motors Corporation (proposed)

Estimated Volume:

86,000 consents

Authority:

United Auto Workers Agreement (non-statutory)

Description:

The General Motors Corporation (GMC) administers a supplemental income program to provide early and disabled retirees with additional income until they reach 62 and can collect Social Security. Because there is a limit on the amount of wages a retiree can earn and still be eligible for the program, GMC had been obtaining FICA information from the Social Security Administration (SSA) to verify retiree's earnings. GMC had saved approximately $400,000 through disqualifications based upon the information received. GMC had been able to obtain this information because they had secured waivers from approximately 24,000 company employees who retired early. However, in 1982 SSA declined to provide this information any longer to GMC since the waivers authorizing disclosure were no longer valid because of the requirements of 26 CFR 301.6103(c)(1)(a). We have been advised that GMC intends to reinstitute this program and will be soliciting approximately 86,000 consents from early and disabled retiress.

Immigrant Visa Program (proposed)

Estimated Volume:

400,000 per year (continuing)

Statutory Authority:

Section 212(a)(15) of the Immigration and Naturalization Act describes those persons who are ineligible for immigrant visas. In order to overcome this exclusionary provision, applicants for immigrant visas must substantiate that upon entry into the United States they will not become public charges or will have more than a poverty level income.

Description:

Every year approximately 400,000 requests for immigrant visas are received by the State Department in connection with permits for resident aliens and citizenships applications. As part of their applications, they must prove that their sponsors have the means to support them if the immigrant should become unemployed or run into other economic difficulties. In the past the State Department has been accepting various types of evidence for verification. However, they have concluded that the best available information is a certified copy of the sponsor's income tax return. Therefore, they are considering making it the only acceptable proof with two alternatives for submitting them. Sponsors could request certified copies of their returns and send them to the individuals being sponsored or they could authorize IRS to provide copies of their return directly to the State Department.

RESPONSE TO QUESTION 4

DISCLOSURE OF NAME AND ADDRESS INFORMATION TO OTHER GOVERNMENT AGENCIES

Disclosures of address information alone to other government agencies occur primarily under IRC 6103(l)(6), (m)(2), (m)(3), and (m)(4).

Child support enforcement agencies are authorized under IRC 6103(l)(6) to obtain certain return information, including address information, in order to establish and collect child support obligations, and to locate individuals owing such obligations. Address information is disclosed to the Parent Locator Service, Office of Child Support Enforcement, Department of Health and Human Services. These disclosures are made by the IRS National Computer Center in accordance with Project 422 procedures. This information is provided to State and local child support enforcement agencies.

In addition, child support enforcement agencies can also obtain address information directly from the IRS under IRC 6103(l)(6). These agencies make Group 1 and Group 2 requests to IRS service centers. Group 1 requests involve certain return information from our Individual Master File. Group 2 requests involve information which the service centers extract directly from the taxpayer's own return. Address information can be disclosed under both types of requests.

IRC 6103(m)(2) provides for disclosures of a taxpayer's mailing address to officers and employees of a Federal agency personally and directly involved in, and solely for the use in the collection or compromise of a Federal claim against such taxpayer. Generally, IRC 6103(m)(2) disclosures are processed under Project 719, Taxpayer Address Request Program.

IRC 6103(m)(3) provides for disclosures of taxpayers' mailing addresses to officers and employees of the National Institute for Occupational Safety and Health (NIOSH) solely for locating individuals who are or may have been exposed to occupational hazards to determine the status of their health or to inform them of the possible need for medical care and treatment. Generally, disclosures are made under Project 719.

IRC 6103(m)(4) provides for disclosure of the mailing address of a taxpayer who has defaulted on an educational loan. Disclosures are made to the Secretary of Education who, in turn, can redisclose the address information to any lender, or any State or nonprofit guarantee agency participating under part B of Title IV of the Higher Education Act of 1965 or to any educational institution with which the Secretary of Education has an agreement under part E of this Act. Generally, disclosures are made under Project 719.

While IRC 6103(m)(2), (m)(3), and (m)(4) are the only sections which authorize the disclosure of address information alone, there are other provisions in IRC 6103 in which address information is provided to government agencies. Under IRC 6103(i)(1), (i)(2), and (i)(3) address information, along with other information, can be disclosed to Federal agencies for the enforcement of nontax Federal criminal laws. Under IRC 6103(i)(5) disclosures of address information can be made to locate fugitives from justice. GAO can receive address and other return information as a part of its audit of the IRS or other Federal agencies. In our summary of disclosures of address information for the past 5 years, we have included these instances because address information was usually disclosed with other information.

Address information is given out under other provisions of IRC 6103 such as IRC 6103(d) (to States for State tax administration purposes) and IRC 6103(j) (to Census for statistical purposes). However, it is not possible to determine the number of disclosures of address information out of the total universe of disclosures made under these provisions.

Item (4) IRC 6103 Disclosures of Names and Addresses of Taxpayers to Government Agencies Calendar Years 1979, 1980, 1981, 1982 and 1983

IRC 6103 Subsection	Agency	CY 1979	CY 1980	CY 1981	CY 1982	CY 1983	Purpose for Disclosure
(i)(1)	Department of Justice	1,467	1,451	3,246	2,684	57,869[1]	Disclosure of returns and return information, including name and address information, to Federal officers or employees upon grant of an ex parte court order by a Federal district court judge or magistrate for use in nontax Federal criminal investigations.
	Federal Energy Administration	3					
	Bureau of Alcohol, Tobacco & Firearms		18				
	Government Printing Office				8		
	Interstate Commerce Commission					6	
	Department of Treasury					3	
	U.S. Postal Service					42	
	Department of Labor					2	
	Department of the Army					1	
(i)(2)	Department of Justice	478	438	1,205	1,379	549	Disclosure of return information, other than taxpayer return information, and including name and address information, to Federal officers and employees for use in nontax Federal criminal investigations, upon request from the head of the agency (or designated officials of the Department of Justice.)
	Federal Energy Administration	2					
	U.S. Customs Service	2	3				
	Air Force	3					
	Department of Agriculture	1				4	
	U.S. Secret Service	2		16			
	Department of Navy		269				
	General Services Administration			870	13		
	Interstate Commerce Commission				2		
	Department of Labor				6		
	Dept. of Health & Human Services				6		
	Department of Treasury				18		
	Department of Commerce					15	
	Environmental Protection Agency					1	
(i)(3)	Department of Justice	501	46	184	70	48	Disclosure of return information to apprise Federal agencies of possible criminal activities
	Bureau of Alcohol, Tobacco & Firearms	4		1			
	U.S. Customs Service	1					
	Department of Treasury		9		4	6	
	U.S. Secret Service			3			
	U.S. Postal Service				1		
	Dept. of Health & Human Services				1		
	Department of Agriculture				1		
	Other				1	1	

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[1] Includes one request concerning 4,718 taxpayers for 11 years totalling 51,898 disclosures.

Item (4) IRC 6103 Disclosures of Names and Addresses of Taxpayers to Government Agencies Calendar Years 1979, 1980, 1981, 1982 and 1983

IRC 6103 Subsection	Agency	CY 1979	CY 1980	CY 1981	CY 1982	CY 1983	Purpose for Disclosure
(i)(5)*	Renegotiation Board*	5*					
(i)(5)	Department of Justice				11	39	Administration of the Renegotiation Act of 1951 Changed effective 9/4/82
(i)(6) (i)(7)	General Accounting Office " " "	509,979	98,533	1,091,352	258,982	7,537,179	New (i)(5) aids Federal agencies in locating fugitives from justice.
(m)(2), (3), (4)		568,000	839,515	808,220	1,329,813	2,285,407	Disclosures to GAO for for making audits of IRS, or BATF. (Renumbered (i)(7) effective 9/4/82.)
(l)(6)	Group I Group II	185,509 2,558	183,388 4,055	210,506 2,533	1,106,579 3,602	1,628,915 5,687	Disclosures under 6103(m) of taxpayer address data are for purposes of collection of Federal claims, locating individuals defaulting on student loans, and locating persons exposed to occupational hazards.
							Disclosures of return information under 6103(l)(6) to Federal, State, and local child support enforcement agencies are for use in establishing and collecting child support obligations, and locating individuals owing such obligations.
							Only under IRC 6103(l)(6), (m)(2), (m)(3), and (m)(4) is the taxpayer's name and address alone given out. Under the other cited provisions, additional information may and usually is given out. Under other provisions such as IRC 6103(d) and (j), address information may be given out but the number of times in relation to total disclosures is unknown.

RESPONSE TO QUESTION 5

LETTER FORWARDING

Policy Statement P-1-187 of June 26, 1979, as amended on April 20, 1984, "Forwarding of Letters for Private Individuals, Organizations or Corporations and Federal, State and Local Government Agencies Without Disclosure of Addresses," provides, in part, that the Service may agree to forward letters for other government agencies. In the case of large volume requests (now over 50 letters at one time), the Service will forward letters under an advance written agreement that provides for reimbursement, if this service would not disrupt tax administration functions. Our Internal Revenue Manual further provides operational procedures for such efforts.

In recent years, the Service has been involved in various mailout programs. In each of the large volume cases, the program met our policy requirements, was reimbursable, and did not impinge on ongoing IRS programs. We are providing a listing of all large volume (over 100) mailout programs performed by the Service since 1979. In addition, we are providing, by IRS region, a listing of all letter forwarding done by our field offices for which we have records. In some cases, our records only go back one year. Included in this list are efforts for the:

-Selective Service (Locating non-registrants for the draft)
-Equal Employment Opportunity Commission (Locating individuals involved in class action suits)
-National Labor Relations Board and the Department of Labor (Locating individuals involved in back pay cases, among others)
-Small Business Administration (Locating members of a class action entitled to rebates on loans)

The policy meets all the legal requirements contained in the disclosure provisions of the Internal Revenue Code and the Privacy Act of 1974. The operation itself has a minimal cost, is completely reimbursable in large volume cases, and does not seriously disrupt tax administration programs.

NATIONAL OFFICE AND LARGE VOLUME REQUESTS

Letters Forwarded Federal, State & Local Agencies
(1979- To Present

Agency	Date Request Approved	Approximate No. of Addressees	Reason For Request
USAF/Office of Surgeon General	4/12/79	2	Medical follow-up on individuals exposed to radiation during atmospheric nuclear weapons testing
USAF/Office of Surgeon General	5/3/79	41	Medical follow-up on Air Force personnel or dependents whose Pap smears were questionable
USAF/Office of Surgeon General	5/3/79	302	Same as above
USAF/Medical Center, Lackland AFB, Texas	5/30/80	30	Medical follow-up study of patients with renal disease
USAF/Office of Surgeon General	6/6/80	103	Medical follow-up on Air Force personnel or dependents whose Pap smears were questionable
USAF/Office of Surgeon General	2/2/82	4	Medical follow-up of female Air Force dependents who underwent laparoscopic fulguration for tubal ligation
USAF/Office of Surgeon General	3/8/82	3	Same as above
USAF/Office of Surgeon General	3/17/82	1	Same as above
USDA/Animal & Plant Inspection Service	12/26/79	1	Notify owner that stolen/lost Afghan Hound was found
Equal Employment Opportunity Commission (EEOC)	4/79	1,800	Contact female class members involved in sex discrimination suit captioned: Romasanta, et al. v. United Air Lines, Inc. and McDonald v. United Air Lines, Inc.
EEOC	4/17/79	6	Notify claimants of financial awards resulting from settlement in civil litigation captioned: Taberoff et al. and EEOC v. Farmers Group, Inc.

Agency	Date Request Approved	Approximate No of Addressees	Reason For Request
EEOC	1/28/80	2,300	Notify individuals of possible monetary benefits under settlement in employment discrimination suit captioned: EEOC et al. v Detroit Edison et al.
EEOC	3/27/80	17	Notify individuals of their entitlement to backpay awards in sex discrimination suit captioned: EEOC v. Ball Corporation, et al.
EEOC	5/30/80	1,800	Notify class of employees of eligibility for monetary award sex discrimination action captioned: Polston v. Metropolitan Life Insurance Company
EEOC	6/80	1,500	Notify employees/applicants of Page Engineering Co. of eligibility for monetary awards in race discrimination suit captioned: EEOC v. Page Engineering
EEOC	5/6/81	8	Contact individuals who may be entitled to benefits in sex discrimination suit captioned: EEOC v. ITT Continental Baking Company (Wonder Bread)
EEOC	5/26/81	45	Reason not provided to IRS
EEOC	6/1/81	25	Notify female custodial workers of backpay awards in civil litigation captioned: EEOC v. Kent State University, et al
EEOC	7/9/81	1	Contact potential witness in litigation captioned: Hayslett v. Catepillar Tractor Co.
EEOC	7/10/81	10	Contact individuals who may be entitled to monetary awards in discrimination suit captioned: EEOC v Clayton Federal Savings & Loan Association
EEOC	7/29/81	2	Contact claimants who are entitled to monetary awards in sex discrimination suit captioned: EEOC v. Delaware Trust Co.
EEOC	8/4/81	5	Contact individuals who may be entitled to monetary awards in discrimination suit captoned: EEOC v. Clayton Federal Savings & Loan Association

Agency	Date Request Approved	Approximately No. of Addressees	Reason For Request
EEOC	8/14/81	16	Transmit release forms to female employees entitled to settlment in sex discrimination suit captioned: EEOC v. J.C. Penny Co., Inc.
EEOC	8/21/81	7,000	Notify former employees of Illinois Bell Telephone Co. of proposed settlement in sex discrimination suit
EEOC	8/26/81	12,000	Contact class members involved in race discrimination suit captioned: EEOC, et al., v. Motorola, Inc.
EEOC	8/27/81	22	Notify individuals of possible entitlement to som[illegible]emedy in discrimination suit captioned: EEOC v. The Rath [illegible]cking Company, et al
EEOC	8/27/81	4	Same as above
EEOC	8/28/81	2	Transmit Release of Claims letters in civil litigation captioned: EEOC v. Winnebago County, et al.
EEOC	10/21/81	1	Notify Charging Party that complaint in discrimination action has been resolved
EEOC	10/26/81	1	Contact Charging Party in civil suit captioned: EEOC v. Sears Roebuck & Co.
EEOC	10/26/81	18	Contact individuals who are entitled to monetary releif/ employment benefits in settlement of sex discrimination suit captioned: EEOC v. Wausau Homes, Inc.
EEOC	10/30/81	200	Contact individuals involved in litigation captioned: EEOC v. BancOhio/Akron National Bank
EEOC	11/30/81	577	Notify potential claimants of backpay awards in race discrimination suit captioned: Moses Dickerson, et al. v. U.S. Steel Corporation, et al.
EEOC	3/12/82	41	Contact individuals who are entitled to backpay in discrimination suit captioned: EEOC v. Sandia Savings and Loan Association

Agency	Date Request Approved	Approximate No. of Addressees	Reason For Request
EEOC	3/17/82	300	Contact potential witnesses in sex discrimination suit captioned: EEOC v. Mexicana Airlines
EEOC	5/24/82	1	Reason not provided to IRS
EEOC	6/1/82	450	Notify class of female employees of possible entitlement to back pay or other relief in sex discrimination action captioned: EEOC v. General Telephone Co. of Ohio
EEOC	6/9/82	2	Notify Charging Parties of offer of monetary awards in civil awards in civil suit captioned: EEOC v. Local 15, International Union of Operating Engineers
General Accounting Office	2/81	600	Contact potential members of class action discrimination suit captioned: Miller, et al., v. Staats, et al.
Department of Energy	5/30/80	800	Contact certain individuals who were exposed to radioactive substances, for medical and scientific studies
Department of Labor	11/7/79	120	Contact individuals entitled to damages awarded in discrimination action captioned: Marshall v. Goodyear Tire & Rubber Company
Department of Labor	6/12/80	42	Notify certain former employees of Uniroyal Inc. of monetary relief awarded in administrative proceeding pertaining to sex discrimination charges captioned: Dept. of Labor, Office of Federal Contract Compliance Programs v. Uniroyal, Inc.
Department of Labor	10/29/80	65	Contact individuals entitled to back wages under agreement between DOL, EEOC and the defendant in civil action captioned: EEOC v. Dixie Furniture Co., Inc.
National Labor Relations Board (NLRB)	4/27/81	1	Contact complainant in NLRB investigation of charges against Moeller Manufacturing Co.

Agency	Date Request Approved	Approximate No. of Addressees	Reason For Request
NLRB	4/27/81	6	Contact individuals entitled to backpay under NLRB order involving American Gypsum Company
NLRB	5/4/81	4	Contact claimants entitled to backpay in settlement of claims against Carlson Roofing Co., Inc.
NLRB	5/4/81	16	Contact individuals entitled to compensation for lost wages from Wellman Industries, Inc.
NLRB	5/20/81	10	Contact individuals involved in discrimination action under NLRB investigation
NLRB	5/26/81	7	Contact individuals entitled to backpay under court judgement against Pillowtex Corporation
NLRB	6/4/81	2	Notify individuals entitled to monetary relief from Midot Management, Corp., d/b/a Klein's Park Manor
NLRB	6/5/81	1	Contact individual involved in NLRB case on Roger Harmon Motors, Inc.
NLRB	6/15/81	2	Contact discriminatees entitled to backpay under terms of NLRB order involving Arco Electric Company
NLRB	6/9/81	2	Contact claimants entitled to backpay in settlement of claims against Long Manufacturing Co.
NLRB	6/25/81	4	Contact individuals involved in NLRB case on Daniel Construction Co. and Laborers Local 784
NLRB	6/25/81	1	Contact discriminatee involved in NLRB case on Preterm, Inc.
NLRB	6/25/81	8	Contact discriminatees entitled to backpay under court judgement against Reppel Steel and Supply Co., Inc.

Agency	Date Request Approved	Approximate No. of Addressees	Reason For Request
NLRB	6/29/81	38	Contact current or former employees of Sheraton Great Falls Inn, d/b/a Bootlegger Trail, Inc. & Northwest Motor Inn, who may be entitled to recovery of excess insurance payments under company's group insurance plan
NLRB	6/29/81	3	Contact individuals involved in NLRB case on Gulf-Wandes Corporation
NLRB	7/2/81	21	Contact fomer employees of California Marine Hardware Co. who may be entitled to backpay
NLRB	7/10/81	18	Contact backpay claimants in NLRB case titled: Fort Vancouver Playwood Company
NLRB	7/10/81	4	Contact individuals involved in NLRB case on General Iron Corporation
NLRB	7/23/81	1	Contact individual involved in NLRB case on Prineville Stud Company
NLRB	7/29/81	1	Contact individual involved in NLRB case
NLRB	8/7/81	12	Contact discriminatees involved in NLRB case on Columbia Bldg. Materials, Inc.
NLRB	8/14/81	39	Contact individuals involved in NLRB case on Sheraton Great Falls Inn, d/b/a Bootleggers Trial, Inc. & Northwest Motor Inn
NLRB	8/18/81	1	Contact individual involved in NLRB case on Prineville Stud Company
NLRB	8/21/81	1	Contact individual involved in NLRB case on Monahan Auto Repair Corporation

Agency	Date Request Approved	Approximate N of Addressees	Reason For Request
NLRB	8/28/81	1	Contact individual involved in NLRB case on J.P. Stevens and Co., Inc.
NLRB	8/28/81	1	Contact individual involved in NLRB case on Solboro Knitting Mills, Inc.
NLRB	9/11/81	10	Contact individuals entitled to backpay under court judgemen against Empire Shirt Trimming Co., Inc.
NLRB	9/21/81	7	Contact individuals involved in NLRB case on Sheraton Great Falls Inn, d/b/a Bootlegger Trial, Inc. and Northwest Motor Inn
NLRB	9/28/81	1	Contact individual involved in NLRB case on Gulf-Wandes Corporation
NLRB	10/6/81	7	Contact individual entitled to backpay from employment with Rice Food Markets, inc.
NLRB	10/6/81	6	Contact individuals entitled to backpay as result of litigation involving Thomas Hoover & Dennis Loy, d/b/a The Players Restaurant
NLRB	10/26/81	3	Contact individuals involved in NLRB case on Mutlimatic Products, Inc.
NLRB	10/30/81	1	Contact individual entitled to payment awarded in court judgement against Southern Household Products, Inc.
NLRB	10/30/81	127	Contact individuals entitled to backpay in NLRB case on Sambo's Restaurants, Inc.
NLRB	12/10/81	2	Contact discriminatees entitled to backpay in NLRB case on Regency Thermographers of Mass., Inc.
NLRB	12/22/81	1	Contact individual entitled to backpay in NLRB case on G&M Underground Contracting Co.
NLRB	4/16/82	1	Contact claimant entitled to backpay under court judgement against High Performance Tube, Inc.

Agency	Date Request Approved	Approximate No. of Addressees	Reason For Request
U.S. Marine Corp/ Division of Information	8/7/79	1	Contact former marine in connection with essay to be publishe by Life Magazine on Vietnam War veterans
U.S. Marine Corp/ Division of Information	9/12/79	1	Same as above
Department of Navy	10/80	375	Notify plaintiffs of enlistment bonuses awarded under judgement in civil actions captioned: Allen, et al. v. United States and Carini, et al. v. United States
Securities & Exchange Commission	6/10/80	13	Contact mutual fund's shareholders to notify them of distribution of fund's assets resulting from civil injunctive action by SEC, i.e., SEC v. Florida Bank Fund, Inc.
Small Business Administration	1/81	1,518	Contact members of "class action" suit who are entitled to money/credit rebate on disaster loans

NLRB	6/2/83	471	Notify backpay recipients re: Florida Steel Corporation
DOL/US POSTAL SERVICE	5/13/83	60,000	Notify former postal employees of entitlement to back wages re: Donovan v. U.S. Postal Service
U.S. Navy	10/15/83	7500	Notify class action members of entitlement to settlement & impending motion for determination of counsel's fees re: Edmonds v. US and Herbert v. US
USAF	10/19/82	4	Medical follow-up on former AF beneficiaries to notify them of a change in the original diagnosis of pap smears
US Army/Central Accounting Office	7/20/82	1	Notify veteran of entitlement to a US Savings Bond purchased as an award
EEOC	7/19/82	72	Notify individuals of entitlement to settlement in race & sex discrimination action captioned: EEOC v. Alabama Power Company
EEOC	8/6/82	1600	No reason given
DOL	11/5/82	1	No reason given
Treasury/ Bureau of Public Debt	11/10/82	4600	Notify individuals to possible entitlement to Series H and HH Savings Bond interest checks
Selective Service	8/12/82 11/23/82	34,296 103,954	Notification to register for draft

EEOC	12/14/83	15,000	Notify class members of possible entitlement to relief in race discrimination suit captioned: Burlington Northern Employment Practices Litigation
NLRB	3/31/84	1	Notify individual of entitlement to backpay re: Industrial Studs, Inc.
NLRB	1/19/84	5	Notify backpay claimants re: Dravo Steelship, Inc.
NLRB	2/9/84	3	No reason stated
NLRB	1/27/84	1	Notify key witness in labor practice action re: Webb Ford, Inc.
NLRB	1/19/84	4	Notify backpay claimant re: Randall Division of Textron, Inc.
ILLINOIS	5/21/82	1,500	Notify individuals of entitlement to refund of deposit with State Universities Retirement System.
EEOC	7/29/83	1108	Notify minority class members of possible entitlement to settlement re: EEOC v. State Farm Insurance Company
EEOC	9/15/83	212	Notify individuals of entitlement to settlement re: EEOC v. Barry County Medical Facility
EEOC	8/8/83	1000	Notify individuals of possible entitlement to settlement re: EEOC v. Ecomony Fire and Casualty Company
EEOC	7/5/83	865	Contact Female job applicants in job discrimination suit re: EEOC v. Monarch Machine Tool Co., et al.
DOJ	4/13/83	21	Notify individuals of entitlement to settlement re: Allen et al. v. US; and Carini, et al. v. US
DOJ	4/23/83	6	Notify class members of entitlement to settlement re: Vaughn v. GPO
NLRB	8/17/83	281	Notify backpay claimants re: International Assn. of Bridge, Structural, & Ornamental Ironworkers

NORTH ATLANTIC REGION

NO RECORDS MAINTAINED

MID-ATLANTIC REGION

Letters Forwarded From Mid-Atlantic Region

Agency	Date Request Approved	.proximate # of Addressees	Reason for Request
EEO Commission	8/8/83	5	Claimants in connection with a civil action.
State of New Jersey Department of Health	3/22/84	5	Inform addressees of pro-rata share of health benefits
National Labor Relations Board	12/7/81	1	Unknown
	7/16/82	1	Unknown
	8/4/82	5	Unknown
	5/18/83	1	Unknown
	7/13/83	1	Unknown
	11/2/83	1	Addressee due backpay
	1/11/84	9	Settlement with Strick Corporation
	2/15/84	1	Unknown
EEO Commission	5/4/82	3	Addressees entitled to monetary relief
	12/12/83	6	Settlement of Damages
Department of Education of Pa.	4/13/83	1	Unknown
	12/21/83	3	Unknown
Commonwealth of Pa. Dept. of Health	4/21/83	50	Three-Mile Island (TMI) Follow-up Health Studies
	10/20/83	79	TMI Follow-up Health Studies
	11/2/83	33	TMI Follow-up Health Studies
	1/11/84	19	TMI Follow-up Health Studies
EEO Commission	6/27/83	14	To deliver backpay from an EEO Lawsuit
	9/26/83	1	To deliver backpay from an EEO Lawsuit
Department of the Army	9/28/83	1	To locate a person who was due approximately six years of backpay.

SOUTHEAST REGION

Letters Forwarded From the Southeast Region

Agency	Date	Number	Reason
EEOC	11/83	6	Back Pay Settlement
DOL	11/83 to Present	923	Bankrupt Companies wanting to disperse funds
EEOC	3/84	1	Lawsuit-Back Wages
NLRB	3/84	6	Back Pay Settlement
NLRB	4/84	2	Back Pay Settlement
EEOC	12/82	7	Lawsuit-Back Wages
EEOC	12/82	2	Lawsuit-Back Wages
EEOC	2/83	7	Lawsuit-Back Wages
EEOC	3/83	1	Lawsuit-Back Wages
EEOC	3/83	1	Lawsuit-Back Wages
EEOC	4/83	24	Lawsuit-Back Wages
EEOC	7/83	2	Lawsuit-Back Wages
EEOC	10/83	5	Lawsuit-Back Wages
EEOC	11/83	1	Lawsuit-Back Wages
EEOC	2/84	1	Lawsuit-Back Wages
DOL	8/83	61	Minimum Wage Settlement
NLRB	12/81	3	Back Pay Settlement
EEOC	2/82	4	Discrimination Settlement
EEOC	11/82	32	Discrimination Settlement
EEOC	1/83	1	Discrimination Settlement

CENTRAL REGION

		Letters forwarded from Central Region	
DOL	12/8/83	1	To Process a Black Lung Claim
EEOC	2/2/83	1	Notification to Claimant
EEOC	2/22/83	1	Notification to Claimant
EEOC	4/27/83	24	Discrimination Litigation
West Virginia Dept. of Human Services	7/7/83	1	To Advise Father About Adoption Status of Child
EEOC	8/2/83	1	Discrimination Litigation
EEOC	9/17/83	6	To Notify Members of a Class Action Suit
EEOC	10/7/83	58	To Notify Successful Litigants of Award
Veterans Admin.	10/27/82	1	To Inform Regarding Unpaid Hospital Bill
EEOC	11/22/82	18	To Notify Litigant of Award
EEOC	11/22/82	85	No Notify Litigant of Award
NLRB	12/6/82	1	Notification of Back-Pay Award
EEOC	12/28/82	34	Notification to Claimants
EEOC	11/2/82	6	" " "
EEOC	6/9/82	7	" " "
EEOC	1/29/82	5	Advice of Hiring Policies
EEOC	3/26/82	4	Notify a Claimant Regarding an Unfair Labor Practice

MIDWEST REGION

Letters Forwarded From the Midwest Region

AGENCY	DATE	NO. OF LTRS	REASON
EEOC	10-2-81	18	Trial settlement with possible right to compensation
EEOC	12-4-81	23	"
EEOC	5-3-82	5	"
EEOC	5-20-82	73	"
EEOC	5-20-82	84	"
EEOC	6-1-82	1	"
EEOC	6-24-82	19	"
NLRB	8-2-82	3	"
NLRB	8-2-82	1	"
EEOC	8-2-82	6	Seeking witness for civil proceeding
EEOC	9-3-82	15	"
NLRB	9-3-82	1	Potential back pay award
NLRB	10-27-82	1	Possible reemployment rights job settlement
EEOC	11-8-82	79	Trial settlement giving right to compensation
EEOC	11-9-82	2	Seeking witnesses for civil proceeding
NLRB	9-22-83	1	Reemployment offer as result of trial settlement
EEOC	7-26-83	15	Entitlement to compensation following trial settlement
EEOC	8-23-83	8	Advising that a trial was pending; if found in EEOC favor
NLRB	8-23-83	1	Civil proceeding; request under agreement with agencies
EEOC	8-30-83	2	Pending trial settlement with possible right to compensation
EEOC	11-9-83	12	"
EEOC	11-25-83	17	"
EEOC	12-27-83	6	"
NLRB	3-20-84	3	Civil proceeding; request under agreement with agencies
Dept. of Labor	1-11-84	10	Back pay under ERISA pension plan
EEOC	2-24-84	1	Law suit against employer-looking for affected employee
EEOC	3-21-84	58	"
Dept. of the Army	7-17-81	1	Death benefit to daughter

SOUTHWEST REGION

Letter Forwarded From the Southwest Region

Letter forwarding on Behalf of Federal State and Local Government Agencies

Agency	Date Request Approved	Number of Intended Recipients	Reason for Request
Tx Dept. of Human Resources	(a) 5/16/79	(b)	(c)
U.S. Postal Service	(a) 2/08/79	(b)	(c)
Dept. of Education	(a) 12/30/80	(b)	(c)
Probation Office	(a) 5/16/80	(b)	(c)
Dept. of Education	(a) 12/30/80	(b)	(c)
EEOC	(a) 10/04/82	(b)	(c)
Tyler Co. Child Welfare	8/08/83	1	Pending legal proceeding
EEOC	9/21/83	64	Pending lawsuit
NLRB	2/16/84	10	Due backpay
NLRB	3/07/84	1	Due backpay
NLRB	3/23/84	1	Due backpay

(a) As case file has been destroyed, we are providing the date request was received.

(b) As case file has been destroyed, we do not know the number of requests.

(c) As case file has been destroyed, we do not know the reason for request.

Letter Forwarded From the Southwest Region

Letter forwarding on Behalf of Federal State and Local Government Agencies

Agency	Date Request Approved	Number of Intended Recipients	Reason for Request
Department of Housing & Urban Development	1980	5	To notify former employees who had been awarded a monetary amount in a class action EEO lawsuit
State Treasurer Office	4/2/84	1	Forwarding of notices unclaimed property held by the State
State Treasurer Office	1/16/84	1	Forwarding of notices unclaimed property held by the State
State Treasurer Office	12/29/83	1	Forwarding of notices unclaimed property held by the State
State Treasurer Office	12/29/83	1	Forwarding of notices of unclaimed property held by the State
State Treasurer Office	12/29/83	1	Forwarding of notices of unclaimed property held by the State
State Treasurer Office	12/29/83	1	Forwarding of notices of unclaimed property held by the State
Dept. of Labor	2/21/84	93	Locate individuals whom DOL holding back wages
NLRB	4/5/84	3	Backpay Checks

WESTERN REGION

Letters Forwarded From t[illegible] estern Region

IRM 1272(11)(15)0 - April 1982 to Present

Agency	Date	Number of TPs	Reason for Request
Equal Employment Opprotunity Commn	2-2-83	4	Monetary award
"	5-25-83	2	Monetary benefit
"	5-31-83	29	"
"	7-21-83	4	"
"	7-21-83	11	"
"	8-18-83	9	"
"	8-18-83	26	"
"	8-18-83	57	"
"	8-18-83	1	"
"	9-12-83	74	"
"	9-13-83	30	"
"	9-15-83	13	"
"	9-15-83	20	"
"	9-15-83	1	"
"	9-15-83	3	"
"	9-15-83	1	"
"	9-15-83	1	"
"	9-15-83	2	"
"	9-15-83	1	"
"	9-15-83	2	"
"	9-19-83	2	"
"	9-19-83	1	"
"	9-21-83	2	"
"	9-27-83	1	"

IRM 1272(11)(15)0 - April 1982 to Pres. .

Agency	Date	Number of TPs	Reason for Request
Equal Employment Opportunity Comsn	10-3-83	1	Monetary benefits
"	10-3-83	6	"
"	12-6-83	6	"
"	12-12-83	5	"
"	12-28-83	1	"
Social Security Administration	2-2-84	1	Locate address
Equal Employment Opportunity Comsn	2-1-84	1	Monetary benefits
"	2-8-84	5	"
"	3-15-84	1	"
"	3-6-84	1	"
"	4-11-84	15	"
"	4-17-84	2	"

IRM 1272(11)(15), - April 1982 to Present

Agency	Date	Number of TPs	Reason for Request
State of Arizona Attorney General	7-11-83	5	Restitution Checks to TPs
Equal Employment Opportunity Comsn	7-20-82	56	Back Pay
National Labor Relations Board	7-22-83	1	Back Pay
Equal Employment Opportunity Comsn	7-26-83	1	Locate potential witness
State of Arizona Attorney General	8-1-83	22	Restitution checks to TP
Equal Employment Opportunity Comsn	8-17-83	3	Back Pay
National Labor Relations Board	8-30-83	18	Locating persons (discrimination Suit
"	9-1-83	3	Back Pay
State of Arizona Attorney General	9-7-83	37	Restitution Checks
Equal Employment Opportunity Comsn	11-22-83	1	Back Pay
"	12-14-82	1	Back Pay
"	1-23-84	6	Back Pay
National Labor Relations Board	3-1-84	1	Back Pay
State of Arizona Attorney General	5-3-84	4	Restitution Checks

IRM 14..-(11)(15)0 - April 1982 to Present

Agency	Date	Number of TPs	Reason for Request
National Labor Relations Board	11-2-82	2	Back pay
"	11-2-82	1	"
"	11-15-82	8	"
"	12-6-82	1	"
"	12-10-82	1	"
"	12-15-82	3	"
"	12-15-82	11	"
"	2-16-83	1	"
"	3-4-83	1	"
"	4-4-83	4	"
"	4-5-83	1	"
"	4-8-83	1	"
"	8-22-83	4	"
"	8-22-83	1	"
"	8-30-83	1	"
"	4-7-82	28	"
"	4-7-82	30	Refund of insurance premium
"	4-22-82	1	Back pay
"	4-27-82	1	"
"	4-27-82	1	"
"	5-25-82	11	"
"	5-25-82	2	"
"	7-17-82	3	"
"	7-8-82	2	"

IRM 1272(11)(15)0 - April 1982 to Present

Agency	Date	Number of TPs	Reason for Request
National Labor Relations Board	7-27-82	10	Back pay
"	7-27-82	56	"
"	8-6-82	2	"
King County, Washington	11-1-82	1	"
National Labor Relations Board	9-9-82	7	"
"	10-13-82	3	"
"	10-17-82	15	"
"	10-18-82	2	"
"	10-17-82	1	"
"	10-18-82	1	"
"	10-18-82	6	"
"	12-8-82	1	"
"	12-8-83	12	"
"	12-5-83	2	"
National Labor Relations Board	1-4-84	1	"
Equal Employment Opportunity Comsn	4-20-84	1	Health ins. premium reimbursement
King Coungy, Washington	4-26-84	9	Back pay

IRM 1272(11)(15)0 - April 1982 to Present

Agency	Date	Number of TPs	Reason for Request
State of Alaska Health and Social Services	8-11-82	1	Need for medical attention as a result of health screening
U.S. Dept. of the Interior, Bureau of Land Management	May 83	1	Need to locate an individual
Municipality of Anchorage, Property and Facilities Mgmt	5-3-83	1	Need to notify last owner of record of foreclosure sale
"	5-10-83	3	"
National Labor Relation Board	8-30-82	2	Back pay
"	3-8-83	23	"
"	5-3-83	4	"
[illegible]	5-4-82	1	"
"	6-29-82	5	"
"	12-7-83	29	"
"	5-6-82	3	"
"	4-26-82	4	"
"	7-18-83	1	"
"	3-14-83	1	"
"	5-25-83	1	"
"	4-1-83	1	Reimbursement of fees

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Updated to 5/4/84

OUTLINE OF DISCLOSURE PROVISIONS OF THE INTERNAL REVENUE CODE

The major disclosure provisions of the Internal Revenue Code are in Sections 6103, 6104 and 6110. IRC disclosure provisions are also in Sections 152(e), 4102, 4424, 6108, 6405, 7517, 8023 and others.

IRC 6103 provides authority for disclosure of returns and return information to specific categories of persons. (Pages 2-12).

IRC 6104 provides authority for public inspection of certain records pertaining to exempt organizations and employee plans. (Pages 14-15).

IRC 6110 provides authority for public inspection of private letter rulings and background files after deletion of identification details. (Page 16).

General categories of persons to whom disclosures are authorized to be made under Internal Revenue Code subsection 6103(c)-(o):

Public/Anyone	State/Local Government	Federal Agencies	Other Government
(c)			
	(d) (1)-(2)		
(e) (1)-(7)			
			(f) (1)-(4)
		(g) (2)	(g) (1)
(h) (5)		(h) (1)-(6)	
	(i) (3) (B) (i)	(i) (1)-(5)	(i) (7)
		(j) (1)-(3)	
(k) (1)-(3), (6)	(k) (5)		(k) (4)
(l) (4) (A)	(l) (6)-(8)	(l) (1)-(7)	
(m) (1), (4) (B) (i)	(m) (4) (B) (i)	(m) (2)-(4)	
(n)			
		(o) (1)-(2)	

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INTERNAL REVENUE CODE SECTION 6103

Returns and return information as defined in IRC 6103(b) are confidential and disclosure is not permitted except as authorized under the Internal Revenue Code. The major disclosure provisions of IRC 6103 subsections (c) through (o) are outlined below.

DISCLOSURE TO/FOR	TAX INFORMATION INVOLVED	HOW	IRC 6103 SUBSECTION
Designee of Taxpayer See 26 CFR 301.6103(c)-1 See Delegation Order 156 paragraph (1)(a)	Return or return information that does not impair Federal tax administration	Upon written request signed and dated by the taxpayer.	(c) See IRM 1272, text 300,400, (31)00
State tax officials See Delegation Order 156 paragraph(4), (5). See IRC 6103(p)(8)	Return and return information needed and used by a State for tax administration (IMF-BMF tape, CP-2000's and RAR's.) No disclosure of return information if such would identify a confidential informant or seriously impair any civil or criminal tax investigation. No Redisclosure. (See IRC 6103(a).)	Upon written request to IRS and pursuant to agreements between State tax agencies and the Service. Data provided via magnetic tape or copies. (Accounting and Safeguards required)	(d) See IRM 1272, text (33)00
Persons having material interest (taxpayers and others) See Delegation Order 156,paragraph (1)(b) See Rev. Proc. 80-46	Return and return information that does not impair Federal tax administration. A person receiving returns or return information under 6103 (e)(1)(D)(iii) may not redisclose. (See IRC 6103(a).)	Upon written request to IRS by person with material interest under IRC 6103 (e)(1)-(6). Written request required for returns; requests for return information need not be in writing.	(e)(1)-(7) See IRM 1272, text 160, 210, 320, (11)50, (11)(12)0, (41)22
Congressional committees and GAO. See Delegation Order 156 paragraph (6)(a)	Return or return information Redisclosure only if taxpayer consents in writing. Redisclosure otherwise is limited by IRC 6103(f)	Upon written request to IRS of committee chairman of House Ways and Means and Senate Finance, The Chief of Staff of the Joint Committee, and other committee chairmen on resolution of the House and/or Senate (Accounting Required)	(f) See IRM 1272, text (23)00, (32)0

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President	Any return or return information Restrictions on redisclosure under IRC 6103(g)	Upon written request to IRS personally signed by the President. (Accounting required)	(g)(1) See IRM 1272, text (31)00
Federal agency heads (Tax Checks) See Delegation Order 156 paragraph (9)(a)	Return Information limited to whether an individual has filed returns, failed to pay taxes timely, has been or is under investigation for possible criminal offenses under the internal revenue laws, or been assessed any civil penalty under IRC for fraud. (Pertaining to appointees to Federal positions). Restrictions on Redisclosure under IRC 6103(g)	Upon written request to IRS by President or Heads of any Federal agency or the FBI. (Accounting and Safeguards required)	(g)(2) See IRM 1272, text (31)00
Department of Treasury for Tax Administration	Return and Return Information. No Redisclosure. (See IRC 6103(a).)	At the initiative of IRS or upon request of non-IRS employees to IRS. (Safeguards required)	(h)(1) See IRM 1272, text (22)20, (22)41, (22)42, (22)44.2
Department of Justice (DOJ) for Tax Administration in Federal Grand Jury or any Federal or State Court. See 26 CFR 301.6103 (h)(2). See Delegation Order 156 paragraph (1)(c),(17)	Return or return information meeting tests in IRC 6103 (h)(2). No Redisclosure (See IRC 6103(a))	At the initiative of IRS or upon written request to IRS of the Attorney General, Deputy Attorney General, or an Assistant Attorney General. (Accounting and Safeguards required)	(h)(2)&(3) See IRM 1272, text (22)20, (22)50, (22)57,(27)00
Use in Judicial or Administrative tax proceedings See Delegation Order 156 paragraph (2)	Return or return information that meets tests regarding the information's relationship to the taxpayer at IRC 6103(h)(4) and to the extent ordered pursuant to 18 USC 3500 or Rule 16 of Federal Rules of Criminal Procedure. The Service may withhold disclosure in a proceeding if to do so would reveal a confidential informant or impair a tax investigation.	By the Service or DOJ during an administrative or judicial tax proceeding.	(h)(4) See IRM 1272, text (22)61, (22)62, (41)23

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DOJ and taxpayer. See Delegation Order 156 paragraph (3)(a)	An affirmative or negative reply to an inquiry as to whether a prospective juror has been the subject of any audit or other tax investigation. No Redisclosure (See IRC 6103(a).)	Upon written inquiry to IRS from an attorney of DOJ or a taxpayer (or his/her counsel) in connection with a judicial tax proceeding. (Accounting and Safeguards required)	(h)(5) See IRM 1272, text (22)70, (22)73
Social Security Administration or Railroad Retirement Board See Delegation Order 156 paragraph (18)	Return information limited to address and status of an individual as a non-resident alien or citizen or resident of U.S. No Redisclosure (See IRC 6103(a).)	Upon written request to IRS of payor agency (Accounting and Safeguards required)	(h)(6)
Officers and employees of Federal agency engaged in non-tax criminal investigation or proceedings or Federal grand jury. See Delegation Order 156 paragraph (6)(b)	Any return or return information. No disclosure if such will identify a confidential informant or seriously impair civil or criminal tax investigation. No Redisclosure (See IRC 6103(a).)	Issuance of ex parte order of a Federal district court judge or magistrate. (Accounting and Safeguards required)	(i)(1) See IRM 1272, text (28)10, (28)30, (28)33, (27)00
Officers and employees of Federal agency engaged in non-tax criminal investigationor proceedings or Federal grand jury. See 26 CFR 301.6103(i)(1). See Delegation Order 156 Paragraph(6)(c)	Taxpayer's identity and any return information (other than taxpayer return information). No disclosure if such will identify a confidential informant or seriously impair a civil or criminal tax investigation No Redisclosure (See IRC 6103(a).)	Upon written request to IRS by head of Federal agency, or Inspector General, Department of Justice, Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General, and certain special prosecutors and attorneys, Director FBI, Administrator Drug Enforcement Administration, any U.S. attorney (Accounting and Safeguards required)	(i)(2) See IRM 1272, text (28)10, (28)30, (28)32, (28)34, (27)00

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Head of appropriate Federal agency charged with responsibility of enforcing non-tax Federal criminal laws (See Delegation Order 156 paragraph (1)(f), (6)(d)(i)	Taxpayer identity and return information (other than taxpayer return information) to extent necessary apprise agency head of evidence of a violation of any non-tax Federal criminal law. No Redisclosure (See IRC 6103(a).)	At the initiative of IRS in writing. (Accounting and Safeguards required)	(i)(3)(A) See IRM 1272, text (28)10, (28)40
Officers and employees of any Federal or State law enforcement agency. See Delegation Order 156 paragraph(1)(f), (6)(d)(ii)	Return information to extent necessary to apprise appropriate officers or employees of emergency circumstances of danger of death or physical injury to any individual. No Redisclosure. (See IRC 6103 (a).)	At the initiative of IRS (Accounting and Safeguards required)	(i)(3)(B)(i) See IRM 1272, text (28)10, (28)42.2
Officers and employees of any Federal law enforcement agency See Delegation Order 156 paragraph (1)(f), (6)(d)(iii)	Return information to extent necessary to apprise appropriate IRS officers or employees of emergency circumstances of imminent flight of any individual from Federal prosecution. No redisclosure (See IRC 6103(a).)	At the initiative of IRS (Accounting and Safeguards required)	(i)(3)(B)(ii) See IRM 1272, text (28)10, (28)42.2
Use in Judicial or Administrative non-tax Federal criminal proceedings to which the United States or a Federal agency is a party. See Delegation Order 156 paragraph (c), (e). See Regulations 26 CFR 301. 6103 (i)-1	Return or taxpayer return information obtained under IRC 6103(i)(1) to the extent the court finds such is probative of an issue in the proceedings or as ordered under 18 USC 3500 or Rule 16 of Federal Rules of Criminal Procedure.	At initiative of party receiving information under IRC 6103(i)(1)	(i)(4)(A) See IRM 1272, text (27)00, (28)10(4), (28)50

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Use in Judicial Administrative non-tax Federal criminal proceedings to which the United States or a Federal agency is a party. See Delegation Order 156 paragraph (6). See Regulation 26 CFR 301.6103. (i)-1.	Return information (other than taxpayer return information) obtained under IRC 6103(i)(2) or (3)(A). No admission into evidence if IRS determines and notifies Attorney General or Head of Federal Agency that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.	At initiative of party receiving information under IRC 6103 (i) (1), (2) or or (3) (A)	(i)(4)(B) See IRM 1272, text (27)00, (28)10 (1),(4), (28)50
Officers and employees of any Federal agency. See Delegation Order 156 paragraph (6)(b)	Return of an individual and return information with respect to such individual needed to locate a fugitive from justice involving the commission of a Federal felony offense. No redisclosure. See IRC 6103(a)	Issuance of an ex parte order by a Federal district court judge or magistrate (Accounting and Safeguards required)	(i)(5) See IRM 1272, text (28)10, (28)30
General Accounting Office See Delegation Order 156 paragraph (6)(f)	Return or return information. Joint Committee on Taxation may disapprove of the disclosure.	Upon written request by Comptroller General for an audit of other agencies. (Accounting and Safeguards required)	(i)(7) See IRM 1272, text (23)31-70
Statistical use by Bureau of Census, Bureau of Economic Analysis, Bureau of Economics of the FTC, and Treasury Department. See 26 CFR 301. 6103 (j)(1)-1, (j)(2)-1. See Delegation Order 156 paragraph (7)(a),(b)	Return or return information (FTC is limited to Chapter 1) solely for statistical use. Output must be anonymous. (IMF-BMF-EO/ BMF tape extracts, SS-4, and other tax data) No redisclosure (See IRC 6103(a))	Upon written request to IRS by the Secretary of Commerce, Chairperson of the FTC, and the head of a Bureau or office in Treasury. (Accounting and Safeguard required)	(j) See IRM 1272, text (29)20

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Members of the public. See Delegation Order 156 paragraph (3)(b)(i)	Return information (limited to inspection of accepted offers in compromise under IRC 7122)	Upon Request to IRS	(k)(1) See IRM 1272, text (11)(10)0
Person having or intending to obtain a right to property subject to tax lien for which notice has been filed. See Delegation Order 156 paragraph (3)(b)(ii)	Return information (limited to the amount of outstanding obligation secured by US Tax Lien)	Upon Request to IRS (requestor must furnish written evidence of right in the property)	(k)(2) See IRM 1272, text (11)(13)0
Anyone See Delegation Order No. 156 paragraph (19)	Return information or other information with respect to any specific taxpayer to extent necessary for tax administration to correct misstatements of fact published or discussed.	At initiative of Commissioner of Internal Revenue after approval of the Joint Committee on Taxation. (Accounting required)	(k)(3) See IRM 1272, text (11)30
Foreign government under tax convention (treaty or agreement to exchange information under IRC 274). See Delegation Order 114	Return or return information subject to terms and conditions of tax convention	Upon written request to IRS of competent authority or under automatic information exchange provisions of the tax convention. (Accounting required)	(k)(4) See IRM 1272, text (25)00

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State agencies regulating tax return preparers. See Delegation Order 156 paragraph (3)(B)(iii)	Taxpayer identity information with respect to any income tax return preparer and information as to "whether or not any penalty has been assessed against such income tax return preparer under IRC 6694, 6695, or 7216." Disclosure may be only for purposes of the licensing registration, or regulation of income tax return preparers. No redisclosure. (See IRC 6103(a).)	Upon written request of head of State agency designating the officers or employees to whom such information is to be furnished. (Accounting and Safeguards required)	(k)(5) See IRM 1272, text (33)50
Anyone for investigation purposes. See 26 CFR 301. 6103(k)(6)-1	Return information to extent necessary to obtain information in connection with official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the Internal Revenue Laws.	By Service employees as necessary to obtain information and establish liability for tax.	(k)(6) See IRM 1272, text (21)00, (11)(12)0, (11)(13)0, (11)(30)0
SSA and Railroad Retirement Board. See Delegation Order 156 paragraph (3)(b)(iv), (10)(a)	Return and return information with respect to Chapters 2, 21 and 24 for SSA and Chapter 22 for RRB. No Redisclosure (See IRC 6103(a).)	Upon written request to IRS for administration of the Social Security Act and Railroad Retirement Act. Safeguards required.	(l)(1) See IRM 1272, text (29)30
DOL and PBGC. See 26 CFR 301.6103 (l)(2)-1, (l)(2)-2, (l)(2)-3. See Delegation Order 156 paragraph (10)(b)	Return and return information needed for the administration of ERISA. No Redisclosure (See IRC 6103 (a).)	Upon written request to IRS or automatically pursuant to Treas. Regs. (Accounting and Safeguards required)	(l)(2) See IRM 1272, text (29)40, (10)(10)0

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Head of Federal agencies See Delegation Order No. 156 paragraph (6)(g)(ii)	"Whether or not an applicant for a loan has a tax delinquent account" for use in administering Federal loan program. No Redisclosure (IRC 6103(a))	Upon written request to IRS the head cf the agency (Accounting and Safeguards required)	(1)(3)
Treasury employees and practitioners	Return and return information for use in personnel or claimant representative matters relevant and material to the proceeding.	Upon written request to IRS (Accounting required)	(1)(4)(A) See IRM 1272, text (20)62
Officers and employees of the Department of Treasury See Delegation Order 156 paragraph (1)(d)	Return and return information for use in personnel or claimant representative matters relevant to the proceedings. No Redisclosure (See IRC 6103(a))	At IRS initiative or request of non-IRS employees to IRS (Accounting and Safeguards required)	(1)(4)(B) See IRM 1272, text (22)43, (20)63
HEW-now HHS See Delegation Order 156 paragraph (16)	Information returns filed pursuant to Part III of Subchapter A of Chapter 61 of the IRC for purposes of carrying out agreement entered into pursuant to 3232 of the SS Act. No Redisclosure (See IRC 6103(a))	Upon written request to IRS by Secretary of HEW-now HHS (Safeguards required)	(1)(5) See IRM 1272, text (29)50

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Child support enforcement agencies. See Delegation Order 156 paragraph (14), (15). See Rev. Proc. 78-10	Address information to Federal Parent Locator Service; earnings and exemption information from IMF to State/Local agencies; and earnings/payors names of dependents from returns to State/Local agencies. No redisclosure (See IRC 6103(a))	Upon written requests to IRS and subject to reimbursement of costs. (Accounting and Safeguards required)	(l)(6) See IRM 1272, text (34)20
Officers and employees of Department of Agriculture and employees and officers of a State food stamp agency	Return information limited to that obtained under IRC 6103(l)(1) or (5) may only be for the purpose of determining an individual's eligibility for food stamps under Food Stamp Act of 1977. No Redisclosure (See IRC 6103(a))	Upon written request to Commissioner of Social Security Administration (Safeguards required)	(l)(7)
Officers and employees of State or local child support enforcement agency	Return information (from returns with respect to net earnings from self employment, wages, and retirement income) which was obtained under IRC 6103(l)(1) or (5). No Redisclosure (See IRC 6103(a))	Upon written request to Commissioner of Social Security Administration. (Safeguards required)	(l)(8)
Press and other media. See Delegation Order 156 paragraph (8)	Taxpayer identity information to notify persons entitled to tax refunds	At initiative of the Service	(m)(1) See IRM 1272, text (29)80-90, (11)40

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Federal agency officers and employees. See Delegation Order 156 paragraph (6)(h), (e)(g)(i). See Rev. Proc. 83-29	Mailing address of a taxpayer for collection of Federal Claims or preparation of a commercial credit report by a consumer reporting agency. A person receiving the mailing address under IRC 6103(m)(2) may not redisclose. (See IRC 6103(a))	Upon written request to IRS by Federal officers and employees personally and directly engaged in the collection of Federal claims and preparation of commercial credit reports. (Safeguards required)	(m)(2) See IRM 1272, text (29)60
Officers and employees of N.I.O.S.H. See Delegation Order 156 paragraph (6)(h)	Mailing address of taxpayers for purpose of locating individuals who are, or may have been exposed to occupational hazards. No Redisclosure (See IRC 6103(a))	Upon written request to IRS (Safeguards required)	(m)(3)(A),(B) See IRM 1272, text (29)70
Department of Education, educational institutions, and others. See Delegation Order 156 paragraph (6)(i)	Mailing address of a taxpayer who has defaulted on a Federal Student Loan for use in locating taxpayer and collecting loan. A person receiving the mailing address under IRC 6103(m)(4)(B) may not redisclose (See IRC 610 (a))	Upon written request to IRS of Secretary of Education who may then disclose to an institution, or lender or State agency. (Safeguards required)	(m)(4) See IRM 1272, text (29)80
Anyone. See 26 CFR 301.6103 (n)-1. See Delegation Order 156 paragraph (1)(2)	Return and return information to the extent necessary in connection with the processing, storage, transmission, and reproduction and programming, maintenance, repair, testing and procurement for tax administration. A person receiving returns or return information under IRC 6103(n) may not redisclose. (See IRC 6103(a))	At the initiative of the Service in connection with the Contractual Procurement of equipment or services for tax administration purposes. (Safeguards required)	(n) See IRM 1272, text (24)00

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Officers and employees of a Federal agency whose duties require such inspection (See Delegation Order 156 paragraph (3)(b)(vi)	Return and return information regarding taxes on alcohol, tobacco and firearms imposed by Subtitle E of the IRC. No Redisclosure (See IRC 6103(a))	Upon written request of BATF officers or employees to IRS. (Accounting and Safeguards required)	(o)(1) See IRM 1272, text (29)29, (29)90
Use in Administration or civil or criminal enforcement of a tax imposed by IRC. IRC 6103(o)(2) is not applicable to non-wagering tax information (other than IRC Chapter 35 taxes)	Return and return information regarding wagering taxes imposed by Chapter 35 of the IRC. Wagering tax information may not be used directly or indirectly against the taxpayer in any non-tax criminal proceeding No Redisclosure (See IRC 6103(a))	At initiative of IRS and upon request to IRS. (Accounting and Safeguards required)	(o)(2) See IRM 1272, text (26)00 See IRC 4424

Disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards will not be made if the Secretary determine that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws. (See IRC 6103 (b)).

Disclosure under IRC 6103 in certain instances may not be redisclosed by the recipient. No officer or employee of the United States, officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under IRC 6103, and no other person (or officer or employee thereof) who has or had access to returns or return information under IRC 6103(e)(1)(D)(iii), (n)(2) or (4)(B), or (n) shall disclose any return or return information obtained by him in any manner in connection with his service as such officer or employee or otherwise or under the provisions of IRC 6103. (See IRC 6103(a).

Disclosures under IRC 6103 in certain instances are subject to requirements for accounting for the disclosure and for safeguarding against unauthorized disclosures by the recipients.

The accounting requirements are imposed by IRC 6103(p)(3)(A) for disclosures made under IRC 6103(d); (f); (g); (h)(2), (3)(b), (5) and (6); (i)(1),(2),(3),(5) and (7)(A)(i);(j),(h)(3),(4) and (5); (l)(2),(3),(4)(A) and (6); and (o)

The accounting requirements provide for:

(a) a record of accounting to be made available to the taxpayer who is the subject of the records disclosed.
(b) a record of accounting of disclosures for use in preparation of an annual report to the Joint Committee on Taxation.

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The safeguarding requirements are imposed by IRC 6103(p)(4) to provide for conditions for receipt of returns and return information by recipients who are

(a) Federal agencies described in IRC 6103(h)(2), (h)(6), (i)(1),(2), (3) or (5), (j)(1) or (2), (l)(2), (3) or (5) or (o)(1); and

(b) The General Accounting Office; and

(c) any agency, body, or commission described in IRC 6103(d); (i)(3)(B)(i); (l)(6), (7) or (8).

The safeguard requirements provide for:

(a) recordkeeping;
(b) secure storage areas;
(c) restrictions on access;
(d) other safeguards as determined by IRS;
(e) a report to be made to IRS on procedures established and used by the recipient to protect the confidentiality of returns and return information; and
(f) procedures for disposal of returns and return information after use.

In addition to safeguards procedures that must be established and used, the recipient also is subject to:

(a) an audit of safeguard procedures by the General Accounting Office; and
(b) administrative review of safeguard by IRS.

Regulations at 26 CFR 301.9000-1,"procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for disclosure of internal revenue records or information," apply in requests for disclosure of internal revenue records or information. In the event of a demand (any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administration agency, or other authority) --See Delegation Order 156, paragraph (13). The scope of 26 CFR 301.9000-1 is restricted by disclosure laws (e.g. IRC 6103 etc.)

The disclosure provisions of IRC 6103 are made for inspection or disclosure of returns or return information pursuant to other statutes, including the Privacy Act of 1974 and the Freedom of Information Act.

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INTERNAL REVENUE SECTION 6104

Certain records defined in IRC 6104 are open for public inspection. In addition, some of the records are open to Congress and to State officials. Availability is as follows under the IRC:

DISCLOSURE TO	TAX INFORMATION INVOLVED	HOW	IRC 6104 SUBSECTION
Public See 26 CFR 301.6104 (a)-1, (a)-2, (a)-3, (a)-4, (a)-5	Approved application under IRC 501(a), document in support of such application, and any letter or other document issued by IRS. No disclosure of trade secrets, patents, processes, style of work or apparatus, or national defense information. (See 6104(a)(1)(D)	Upon request to IRS National Office Freedom of Information Reading Room	6104(a)(1)(A) See IRM 1272, text 910(1)
Congress	All of the above information	Upon request to IRS	6104(a)(2) See IRM 1272, text 910(2)
Public See 26 CFR 301.6104 (b)-1, (c)-1, (d)-1	Information required to be furnished by IRC 6033, 6034 and 6058	Upon request to IRS or to Department of Labor	6104(b) See IRM 1272, text 910(3), (10)90
State Officials	Adverse action of IRS regarding determination concerning organization described in IRC 501(c)(3)	At initiative of IRS	6104(c) See IRM 1272, text 910(4), (34)48
Public	Notice of Availability of Annual Return of Private Foundation	Published at initiative of Foundation Manager	6104(d) See IRM 1272, text 910(5)

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Plan Participant	Any application with respect to the qualification of a plan under IRC 401(a), 403(a), 405(a), 408(a), 501(a) or application filed with respect to approval of a prototype plan, and any papers submitted in support and any letter issued by IRS.	Upon request to IRS National Office Freedom of Information Reading Room	6104(a)(1)(B) See IRM 1272, text (10)10
Congress	All of the above	Upon request to IRS	6104(a)(2) See IRM 1272, text (10)(10)(3)
Public	All of the above Disclosure permitted only if plan has more than 25 participants	Upon request to IRS	6104(a)(1)(B) See IRM 1272, text (10)50

The provisions of IRC 6103 are applicable with respect to the disclosure of returns and return information which are not available pursuant to IRC 6104.

The disclosure provisions of IRC 6104 are applicable in situations where requests are made for inspection or disclosure of applications, background documents, and letters issued by IRS, and information required to be furnished to IRS by IRC 6033, 6034 and 6058 pursuant to other statutes including the Freedom of Information Act.

In the event of a demand (any subpoena, etc.,) see Delegation Order Number 156, paragraph (13).

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INTERNAL REVENUE SECTION 6110

Public inspection of written determinations, (rulings determination letters and technical advice memoranda) including background file documents pertaining to the above, is provided for by IRC 6110. Availability is as follows under the IRC.

DISCLOSURE TO	TAX INFORMATION INVOLVED	HOW	IRC 6110 SUBSECTION
Public See 26 CFR 301.6110 1 through 7	Written determinations (National Office) and Index thereto	At National Office Reading Room and by subscription	IRC 6110(a) See IRM 1272, text 800
Public	Written determinations (other than National Office)	At IRS Regional Reading Rooms	IRC 6110(a) See IRM 1272, text 800

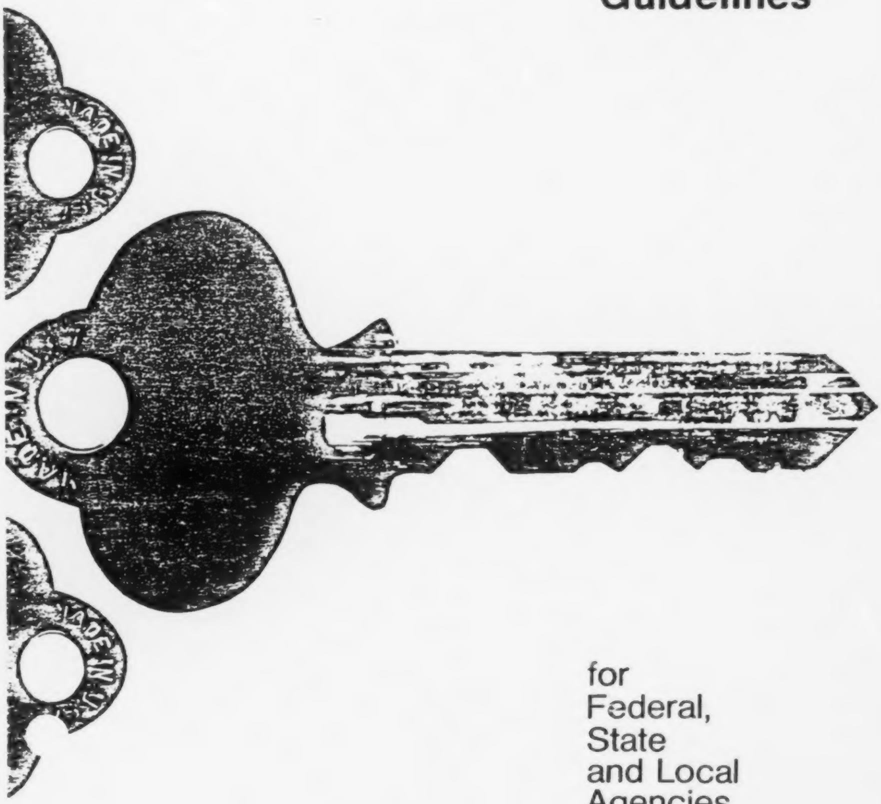
The provisions of IRC 6110 do not apply to: any matter to which IRC 6104 applies; to certain written determinations issued before November 1, 1976; or certain determination letters, background file documents, or letters. See IRC 6110(k).

Written determination or background file documents are not required to be made available to the public or to be withheld from the public by the Secretary except as required under IRC 6110, or with respect to a discovery order made in connection with a judicial proceeding, or otherwise required by the provisions of the IRC. (See IRC 6110(c),(g)(5) and (1))

The disclosure provision of IRC 6110 are applicable where requests are made for inspection or disclosure of written determination pursuant to other statutes including the Freedom of Information Act.

The provisions of IRC 6103 are applicable with respect to the disclosure are not available pursuant to IRC 6110.

Tax Information Security Guidelines



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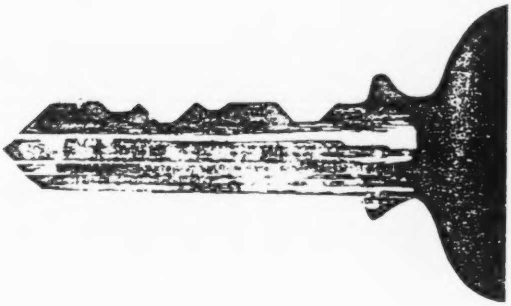

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**Internal
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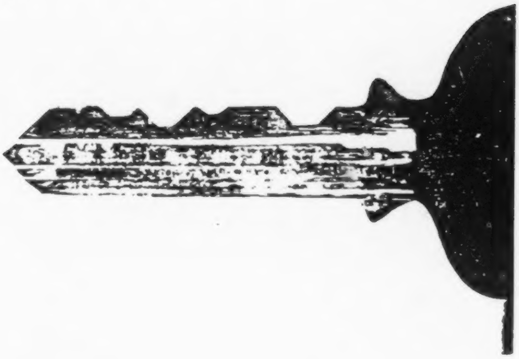
Publication 1075
(Rev. 7-83)



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Preface

This publication combines and revises Publication 1074 and 1075 and supersedes both previous publications.

Introduction

The self-assessment feature is a distinguishing characteristic and principal strength of American tax administration. We in the Internal Revenue Service are acutely aware that in fostering our system of taxation there must be public confidence and trust that we are meeting our legal and moral obligation to protect the confidentiality of personal and financial information furnished to us. Therefore, we must administer the disclosure provisions of the Internal Revenue Code in accordance with the spirit and intent of these laws, ever mindful of this public trust. The Code makes the confidential relationship between the taxpayer and the Internal Revenue Service quite clear. It also stresses the importance of this relationship by making it a crime to violate this confidence. Section 7213 prescribes criminal penalties for Federal and State employees and others who make illegal disclosures of tax information. In addition, section 7431 prescribes civil damages for unauthorized disclosure. The sanctions of the Code are designed to protect the privacy of taxpayers.

Similarly, we recognize the importance of cooperating to the fullest extent permitted by law with State and other Federal authorities in their administration and enforcement of laws. We have strongly supported expansion of programs designed to exchange information with State tax agencies.

The growing concern of citizens and the Congress regarding the individual's rights to privacy, as evidenced both by the frequency of correspondence we receive and the legislation on this subject, makes it doubly important that we reassess our disclosure practices and the safeguards employed.

The guidelines contained in this publication pertain not only to those agencies which receive Federal tax information directly from the Internal Revenue Service, but also those which receive it from secondary sources such as the Social Security Administration. Agents of Federal Lending Agencies are also subject to these guidelines.

The guidelines outlined in this publication apply to *all* Federal tax information regardless of the media on which it is recorded. Computerized media containing Federal tax information must be afforded the same levels of protection given to paper documents or any other media with Federal tax information. Security procedures, systemic, procedural, or manual, should preclude circumvention.

A mutual interest exists with respect to our responsibility to insure that tax information is not disclosed to unauthorized persons or used for unauthorized purposes.

We are confident of your diligence in this area. This publication is intended to provide guidance in assuring that the practices, controls and safeguards you employ adequately protect the confidentiality of the data the Service provides to you; we hope you find it helpful. Conformance to these guidelines will meet the safeguard requirements of section 6103(p)(4) of the Internal Revenue Code. Our District Directors have been asked to take a personal interest in the security of tax data. We can jointly benefit by working together in this important area.

Report Requirements

Safeguard Procedures

In accordance with 26 U.S.C. 6103(p)(4)(E), a written report describing the safeguard procedures established and utilized to assure the confidentiality of Federal tax information will be provided to the Internal Revenue Service within one month of the initial receipt of such information. Federal agencies, and the General Accounting Office should send the report to the Director, Disclosure and Security Division, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. State and local agencies, bodies and commissions should send their reports to the District Director, (Attention: Disclosure Officer) for the district having liaison responsibility. Agents of Federal Lending Agencies should submit reports directly to their contracting agencies.

The report will include the following information:

1. Name, title and telephone number of the official responsible for implementing safeguard procedures;

2. Copies of any statue, portion of a statute or contract governing the agency's functions in pursuance of which the agency, body or commission requests and receives Federal tax returns and return information or, in the case of State tax agencies, copies of the statute or portion of a statute delegating the taxing authority to the agency, body or commission;

3. A chart or description of the agency's organizational structure;

4. A chart or description of the flow of Federal tax data through the organization from its receipt through its return to the Service or its destruction. Pertinent delegation orders or equivalent legal authority which permits use, handling access, etc., at each point in the flow of tax data should be included;

5. The name and address of other agencies (Federal, State or local) and any officials appointed directly by elected officials who may obtain access to Federal tax returns or return information under the organization's procedures. In connection with this requirement, copies of statutory references, pertinent regulations and copies of interagency agreements reflecting the details of such

disclosure will be included. If no such access is allowed under the organizations's procedures a statement to this effect will be included;

6. A determination whether Federal tax data is commingled with or transcribed into data kept by the organization;

7. Copies of all other written procedures and other related memoranda concerning the safeguards afforded to the Federal tax information, including a description of the permanent, standardized system of records maintained to record disclosures. These procedures should, at the minimum, describe the physical security afforded Federal tax data, the access allowed to Federal tax data by agency employees, and the manner in which access is controlled. The procedures will also describe in detail the manner in which Federal tax data is disposed of upon completion of use, to include the methods of destruction for different types of data, the place of destruction and time schedule for disposal, and the names or titles of the agency employees who are responsible for supervising destruction or disposal of Federal tax data. The procedures will also describe the agency's security awareness program, and the controls used to restrict visitors, janitorial help and unauthorized employees in areas where Federal tax data is maintained. A description of your ADP system capabilities, such as time-sharing, batch processing, or real time access as they relate to Federal tax data (if applicable). Include any planned changes or enhancements to your system (equipment, safeguards or programs) and applications of Federal tax data. Also include a brief description of the data processing operations, including system configuration, access controls and audit trail capabilities.

8. Federal agencies with field offices or subordinate agencies outside of the Washington, DC area which receive tax returns and tax return information, such as the offices of the United States Attorneys, Department of Justice, are required to include a description of the safeguard procedures established in their field offices or subordinate agencies.

9. Copies of written procedures and other memoranda concerning the use of independent contractors in connection with the processing, storage and transmission of Federal tax information, including the use of independent contractors in connection with programming, maintenance, repair, testing, and procurement of data processing equipment used in the processing, transmission and storage of Federal tax data.

Safeguard Activity Report

Subsequent to submission of the Safeguard Procedures, a written report will be sent annually to the Internal Revenue Service. This safeguard activity report, which will be signed by the head of the agency or an individual mutually agreed upon by the Service and the agency, will be sent to the officials specified in the "Safeguard Procedures" section in the case of State Agencies. Federal agencies will submit the report to the Baltimore District Disclosure Officer, Internal Revenue Service, 31 Hopkins Plaza, Baltimore, MD 21201.

The report will:

1. Describe in detail significant changes in safeguard procedures or authorized access to Federal tax returns or return information and any changes or enhancements to physical and computer security measures utilized to safeguard Federal tax data.

2. Describe results of internal inspections conducted by the Agency to assure that the written procedures are being adhered to by all Agency employees. Included should be the offices visited, the specific items reviewed, what the findings were, and the overall safeguard awareness found. Specific items which should be included in the inspections are enumerated in the section entitled INSPECTIONS.

3. Report by general category, the disposal of Federal tax data. The information should be adequate to identify the material destroyed and the date and manner of destruction.

4. In the case of a State tax agency, contain information pertinent to disclosures to State auditors. This will include the name of the individual making the inspection, a description of the records disclosed (including the number of records, and the date of the disclosure).

Employee Awareness of the Need for Security

All Agency employees should be thoroughly briefed on all security procedures and instructions requiring their awareness and compliance. Periodic reorientation sessions should be conducted to insure that all appropriate employees remain alert to all security requirements. Consideration should be given to the use of training tools at security orientations such as: films, audio cassettes, round table discussion, lectures, programmed instruction, and seminars.

Security should periodically be a topic of discussion at managerial meetings. Security briefing sessions should be conducted for supervisors throughout the year. The information presented should be passed on to employees.

There are many ways, in addition to orientations and briefings, that security information and requirements can be brought to the attention of appropriate personnel. For example:

Install security bulletin boards throughout the work areas.

Place security articles in employee newsletters.

Route pertinent articles that appear in the technical or popular press to members of the management staff.

Display posters with short, simple, and educational messages.

Employees must be advised at least annually of the provisions of section 7213(a) of the Internal Revenue Code which makes unauthorized disclosure of information from a Federal income tax return a crime that may be punishable by $5,000 fine, five years imprisonment, or both. As part of the awareness program, copies of the law must be provided to each employee.

Employees who have access to Federal tax information must also be advised annually of the provisions of section 7431 of the Internal Revenue Code which permits a taxpayer to bring suit for civil damages in a United States district court for unauthorized disclosure of returns and return information. This section allows for punitive damages in case of willful disclosure or gross negligence, as well as the cost of the action. A copy of this law must also be given to each employee.

Employees should be made aware that these civil and criminal penalties apply even if the unauthorized disclosures were made after their employment with the agency terminated.

Reporting Indications of Improper Disclosure

Upon discovery of a possible improper disclosure of Federal tax information by a Federal employee, a State employee, or any other person, the individual making the observation or receiving information should contact the office of the appropriate Internal Revenue Service Regional Inspector.

Federal agencies may call all telephone numbers listed below (except those with single asterisks) by using their FTS access code and dialing the appropriate seven digit telephone number.

States that are Exchange Subscribers to the FTS circuit may call all telephone numbers listed previously (except those with single asterisks) by using their FTS access code and dialing the appropriate seven digit telephone number.

All other States can call the telephone numbers listed below (except those with double asterisks) by using the commercial telephone circuits and dialing the area code and seven digit number.

Region	Regional Office	States Served by the Region	Telephone Number
Southeast	Atlanta	Georgia, Alabama, South Carolina, North Carolina, Mississippi, Florida, Tennessee	(404) 526-6543* 242-6543**
Western	San Francisco	Alaska, Idaho, Montana, Hawaii, California, Arizona, Oregon, Nevada, Utah, Washington	(415) 556-4126
Mid-Atlantic	Philadelphia	Maryland, New Jersey, Pennsylvania, Virginia, Delaware, District of Columbia	(215) 597-0928
Midwest	Chicago	North Dakota, South Dakota, Illinois, Iowa, Wisconsin, Nebraska, Missouri, Minnesota	(312) 886-5820
Southwest	Dallas	New Mexico, Texas, Wyoming, Colorado, Arkansas, Louisiana, Oklahoma, Kansas	(214) 749-5035* 729-5035**
North Atlantic	New York	New York, Maine, Massachusetts, Vermont, Connecticut, New Hampshire, Rhode Island	(212) 264-9130
Central	Cincinnati	Ohio, Michigan, Indiana, Kentucky, West Virginia	(513) 684-3562
[illegible]gn Operations [illegible] [illegible]-Atlantic Region)	Philadelphia	Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Mariana Islands, & & Trust Territory of the Pacific Islands	(202) 566-4564

*Commercial Telephone Circuit Only.
**FTS Telephone Circuit Only.

Recordkeeping Requirements

All Federal, State and local agencies, bodies and commissions which receive Federal tax returns and return information are required by section 6103(p)(4) of the Internal Revenue Code to establish a permanent system of standardized records of requests made by or to them for disclosure of Federal tax returns or return information. The records are to be maintained for five years or the life of the record, whichever is longer.

Magnetic Tape Files

In the case of magnetic tape files received from the Internal Revenue Service, inventory records must be maintained for purposes of control and accountability. Such records must show the date of receipt, movement and ultimate disposition of the magnetic tapes. In addition, a record count of the number of items on each tape is to be recorded. Any hard copy printout or files resulting from the processing of the tape is to be identified including the disposition of such printout or file. Responsible officials must insure that the removal of tapes and discs (containing Federal information) from the storage area is properly recorded on charge-out records. Semiannual magnetic tape inventories should be conducted. All missing tapes must be accounted for. If information generated after matching State records against IRS' magnetic tape reflects more than a recomputed or adjusted State tax liability (such as name, address, SSN, Federal adjusted gross income, etc., which the State previously had no record of) the recordkeeping requirements for other modes of information (as provided below) must also be met for such information.

Information Other than that on Magnetic Tape Files

A listing of all documents received from the Internal Revenue Service (including information extracted from magnetic tapes) must be maintained by taxpayer name, tax year(s) and type of information (i.e., revenue agent report, Form 1040, workpapers, Intelligence report, etc.). In the case of State agencies, reporting requirements must be met only for information which the State previously did not have in its possession. Such list is to state the reason for and the date each item was requested. In the case of on-going programs, such as the Federal/State exchange agreements, the date would be the date of disclosure by IRS.

In addition, the records must identify the exact location of the Federal data and who has had access to specific Federal data. Charge-out records may be used for this purpose. Information disclosed outside the agency must be recorded on a separate list which reflects to whom the disclosure was made, what was disclosed, why and when it was disclosed. Tax returns or return information obtained on a specific request basis may be returned to the IRS, or destroyed. In the case of Federal agencies only, the safeguard requirements may continue to be met as to returns or return information which is neither returned nor destroyed.

Recordkeeping of Disclosures to State Auditors

When disclosures are made to State Auditors, the above-mentioned requirements pertain only in those instances where the Auditors extract Federal tax information for further scrutiny and inclusion in their work papers.

In those instances where Auditors peruse large volumes of records containing Federal tax information, whether in paper or magnetic tape format, the State tax agency need only identify the bulk records which were examined. This identification will contain the approximate number of taxpayer records, the date of inspection, the best possible description of the records, and the name of the individual making the inspection.

Minimizing Access to Federal Tax Information

Federal tax data should be handled in such a manner that it does not become misplaced or available to unauthorized personnel. Good safeguard practice dictates that access to Federal tax information must be strictly on a need-to-know basis. Federal tax data must never be indiscriminately disseminated, even within the recipient Federal or State agency, body or commission. Data needs should be precisely evaluated before Federal tax data is requested or disseminated.

The potential for improper disclosure is minimized by restricting access to designated personnel. The Service recognizes that often it is not feasible to limit access to information to the one individual who received the information. Upon analyzing information furnished by the Service, that individual may determine that certain action is warranted. The official may then forward Federal tax information to technical and clerical employees for necessary processing. However, no person should be given more information than is needed in performance of his/her duties. For example, when documents are given to a clerk/typist, no Federal tax information should be included unless it is needed in performance of clerical or typing duties. Also, when information from a Federal tax return is passed to a technical employee the employee should be provided only that portion of the return that the employee needs to examine.

To avoid inadvertent disclosures to unauthorized persons Federal tax information must be kept separate from other information to the maximum extent possible. State tax agencies should not maintain Federal tax information as part of the administrative file of the State tax return.

In situations where physical separation is impractical, files should be clearly labeled to indicate that Federal tax information is included and care should be taken to remove all such Federal tax data to preclude access by unauthorized persons.

If Federal tax data is recorded on magnetic media with other data it should be protected as if it were entirely Federal tax data. Such commingling on a single tape should be avoided, if practicable. When data processing equipment is utilized to process Federal tax data, access must be controlled by systemic means if physical or procedural safeguards are limited or inadequate. If your agency shares computer facilities (space, terminals, processor, or memory) with other agencies, departments or individuals who are not authorized to use federal tax data, strict access controls must be maintained which deny access to the facilities. Methods of controlling access will be discussed later in this Publication.

Written instructions should be established to access Federal tax information and record those accesses. A written list of employees allowed access to records and the specific records that each employee may obtain should be available. The list should be updated as often as necessary.

Access to State tax files by te nontax personnel

Some State disclosure statutes and administrative procedures may permit access by nontax employees such as personnel from the State Auditor General's office. As a general rule, nontax employees are not permitted access to Federal returns and return information under section 6103(d). If you have any questions as to whether particular State employees are entitled to access, your inquiry should be forwarded to the Internal Revenue Service. The Internal Revenue Code clearly provides that Federal tax information shall be furnished to the States only for tax administration purposes and made available only to designated State tax personnel and legal representatives.

Access to State tax files by political subdivisions of the State

Statutes in several States permit access by political subdivisions such as cities and counties. The internal Revenue Code does not permit a State to furnish confidential Federal tax information to a political subdivision for any purpose including tax administration.

Access to State tax files by other States

State disclosure statutes and administrative procedures commonly permit access by other States to tax information. Some States have entered into informal agreements with other States for the reciprocal exchange of tax information. The Internal Revenue Code permits access by State tax officials to Federal tax information pertaining to returns filed by taxpayers residing outside the State upon proper request to the Service. States may not furnish Federal tax information to any other State.

Access to State tax files by nongovernmental personnel

Some State statutes may permit nongovernmental access to State tax files under certain circumstances. For example, access might be granted to universities or public interest organizations for research purposes. In such instances, care must be exercised that such persons do not have access to State tax information which has Federal tax information associated with it because universities and public interest organizations cannot have access to Federal returns and return information.

Access to State tax files by other State tax agencies

Some State statutes and administrative procedures may permit access of State tax files by other State tax agencies. However, Federal-State exchange agreements do not permit access by this indirect route. Each State tax agency desiring Federal tax data must enter into an agreement with the Internal Revenue Service and may not disclose the data received to other State tax agencies (except in special circumstances approved by the Internal Revenue Service).

Charge-out Recordation of Access

To safeguard the storage of Federal tax information, such information must be charged out when removed from its storage or files area. A written record of the charge out should be maintained. The charge out entry should be dated and include the name, location, and work unit of the employee as well as the reason for the charge out and a specific description of the materials. Written instructions should be provided including a listing of which employees may be given access to records and also the specific type of records that employees may obtain. The list should be updated as often as necessary.

Provision should be made to assure that access to these records is limited as provided by instructions. A charge out card should be prepared and inserted in place of the records in the normal filing location.

Responsible officials should review the written charge out records frequently to ensure the validity of information contained in such records.

Control Over Processing

Processing of Federal tax information in magnetic media mode, microfilms, photoimpressions, or other formats (including tape reformatting or reproduction or conversion to punch cards or hard copy printout) shall be performed pursuant to one of the following two procedures:

A. Agency Owned and Operated Facility

Processing under this method will take place in a manner which will protect the confidentiality of the information on the magnetic media. Factors in the Computer System Security section and all other safeguards outlined in this publication must also be followed and will be subject to IRS Safeguard Reviews.

B. An Independent Contractor or Shared-Agency Facility

This method may only be used by an agency which processes Federal tax information for tax administration or Federal debt collection purposes. The following conditions will apply to the use of this method:

. The contractor or agency-shared computer facility should implement all applicable safeguards outlined in this publication.

2. The contractor or agency shared computer facility is subject to IRS Safeguard Reviews.

3. The contractor or agency shared computer facility must establish written safeguard procedures describing the security measures to be taken to protect the Federal tax data.

4. Only those employees of the contractor or shared computer facility required to process the data under the terms of the contract may have access to Federal tax data.

5. The contractor or shared facility should maintain a list of employees authorized access and such list should be provided to the agency and the IRS reviewing office.

6. The agency must make periodic inspections of the contract or shared computer facility and keep a written record of such inspections.

7. The agency should have the right to void the contract if the contractor fails to provide the safeguards described above.

The procedures outlined in B above provide reasonable security for tax information. If the contractor or shared agency facility does not employ the conditions contained in B, a statement will be submitted to the IRS subject to review and approval which describes:

Which conditions are not met; and

The action plan for implementing the required conditions that are not present.

The IRS shall *extend* a reasonable period of time for implementation of the required conditions. This grace period shall commence with IRS approval of the action plan.

The above rules also apply to release of magnetic tape to a private contractor or other agency office if the purpose is merely to erase old tapes for reuse.

Computer System Security

In conjunction with computer processing of Federal tax data, certain computer operating system conventions must be considered. While Federal tax data is resident in memory, access must be limited to only authorized applications. Also, no Federal tax data should remain on any accessible storage component after the authorized application is completed. If data is retained in some manner, i.e., print file or computer memory, it must be safeguarded in such a way as to prevent unauthorized disclosure. If backup files containing Federal tax data are maintained whether on-site or off-site, the level of protection must be the same as for the primary files. Whenever maintenance is to be performed on the computer system, all Federal tax data files must be removed to secure storage. If that is not possible, an authorized agency employee must monitor the activities of the customer engineer in order to prevent the unauthorized disclosure of Federal tax data.

A control log or a systemic audit trail must be maintained which records, at a minimum, who accessed the information and when. The log or audit trail should be reviewed periodically to ensure that procedures allow only authorized personnel to access restricted information.

Any computer files created by merging, extracting, or other analysis of Federal data should be labeled and secured the same as the original Federal tax information.

When Federal tax data is on computer media, safeguards must be used that will restrict access to those data processing individuals with a need-to-know or, more appropriately, a need-to-process. Authorization codes should be employed (and safeguarded) to ensure access is by authorized persons only. If Federal tax information is accessible through a telecommunications network, security measures must be provided that will make terminals secure either by physical or eletronic means to prevent unauthorized use. Authorization codes must be used to protect Federal tax data so that terminal users do not automatically have access to Federal tax data. These authorization codes must be protected, controlled, and periodically changed to ensure that only authorized employees may access the information. When an employee's duties require access to only a portion of the total Federal tax data received, their access should be restricted to that portion.

Security of Area Where Federal Tax Information is Stored

The return files storage areas require more than normal security. Access to this area should be limited to the absolute minimum number of employees necessary.

The following principles should be followed to adequately restrict access to the files area:

- Written instructions or procedures should be formulated identifying employees who are authorized and those who are not authorized to have access to the tax files.
- Signs should be posted restricting access to the files area.
- The location and physical layout of the files area should be such that unnecessary traffic is avoided.
- Any files area containing Federal tax data should be set up and maintained as a secured area.
- Cleaning services should be performed in the presence of an assigned employee.
- Consideration should be given to the use of photo identification cards. The use of a personnel identification system is recommended in all locations where files contain Federal tax data.
- Access to files areas which contain confidential Federal tax information must be restricted to tax administration employees.
- The files area should not contain coffee, lounge or similar facilities which would be used by employees not authorized to have access to Federal tax files.
- Sign-in/sign-out registers should be maintained at each entrance to a restricted area that contains Federal tax files. Each person entering the restricted files areas who is not assigned to the area should sign in ink in the register, his/her name, signature, assigned work area, date and time of entry, and purpose of entry. The person controlling the entrance point should verify the name and signature by checking some form of personal identification and enter the time of departure from the area.
- Keys to the files area should be issued only to persons authorized to enter the area.

Security of Magnetic Media

Magnetic tape files should be kept in a secured area under the immediate protection and control of an authorized employee.

Tape reels, disks, or other magnetic media when not in storage, should never be left unattended. When not in use, they should be promptly returned to the storage area.

Good security practice requires that inventory records be maintained for purposes of control and accountability.

Security of Tax Information After Working Hours

During non-duty hours, all areas where Federal tax information is present should be locked. If it is necessary for certain individuals to enter, a procedure should be developed for restricting after-hours access soley to authorized employees.

To the extent practical, Federal tax information in any form (computer printout, photo-copies, tapes, notes, etc.) should be protected after working hours, even though they are in a locked room. Accordingly, such materials should be placed in locked containers when not in use.

Methods of Providing Protection

General

There are a number of ways that security may be provided for a document, an item, or an area. These include, but are not limited to, locked containers of various types, vaults, locked rooms, locked rooms which have reinforced perimeters, locked buildings, guards, electronic security systems, fences, identification systems and control measures. How the required security is provided depends on the facility, the function of the activity, how the activity is organized and what equipment is available. Proper planning and organization will greatly enhance the security at minimum costs.

Containers

The term container includes all file cabinets, both vertical and lateral, safes, supply cabinets, open and closed shelving, desk and credenza drawers, carts, or any other piece of office equipment designed for the storage of files, documents, papers, or equipment.

Some of these containers are designed for storage only, and do not provide protection (for example, open shelving, carts).

For purposes of providing protection, containers can be grouped into three general categories:

1. Security containers
2. Locked containers
3. Safes or vaults

Security Containers

Lockable metal containers approved for the storage of high security items. At present these include the following:

1. Metal lateral key lock files with security modifications.
2. Metal lateral files equipped with lock bars on both sides and secured with combination padlocks meeting FSS Specification FF-P-110.
3. Metal pull drawer cabinets with center or off-center lock bars secured by combination padlocks meeting FSS Specification FF-P-11.
4. Key lock "Mini Safes."

Locked Container

Any wood or metal file, cabinet, desk, credenza or similar type office container which is locked and to which keys and combinations are controlled.

Safes/Vaults

Safes: Safe type containers which have been accepted for general use by the GSA. These can be identified by interior labels which reflect:

1. GSA approval as Class, I II IV, or V safes; or
2. Safes with TRTL-30, TRTL-60, or TXTL-60, Underwriters Laboratories Listings.

Vaults: Approved vaults are those which have been constructed to GSA specifications and which utilize Underwriters Laboratories approved vault doors.

Rooms and Areas

Restricted Area

A restricted area is an area to which entry is restricted to authorized personnel. All restricted areas should also be secured areas. The use of restricted areas is an effective method of controlling the movement of individuals and eliminating unnecessary traffic through critical areas, thereby reducing the opportunity for unauthorized disclosure or theft of tax information.

Restricted areas should be prominently posted and separated from non-restricted areas by physical barriers which will control access. The number of entrances should be kept to a minimum, and each entrance controlled. Adequate control should be provided by locating the desk of a supervisor or other responsible employee at the entrance to assure that only authorized persons, with an official need, enter.

A Restricted Area Register, should be maintained at the main entrance to the restricted area, and all visitors will be directed to the main entrance. Each person entering the restricted area, who is not assigned to the area, should sign-in by entering in ink in the register; name, signature, assigned work area, person to be contacted, purpose for entry, card number, and time and date of entry. The entry control clerk should identify each visitor by comparing the name and signature entered in the register, with the name and signature of some type of photo identification card, if available. If a photo identification card is not available, identification should be established by the most appropriate means available (e.g., the driver's license). Entry must be approved by the supervisor responsible for the area. When leaving the area, the employee should enter the departure time in the register.

Each Restricted Area Register should be closed out at the end of each month, and reviewed by the restricted area supervisor. It is recommended that the register be reviewed by a second level of management. Each review should determine the need for access for each individual.

To facilitate the entry of employees who have a frequent and continuing need to enter a restricted area, an Authorized Access List can be maintained. Individuals whose names appear on the Authorized Access List, should not be required to sign-in, and the control clerk should not be required to make any entry in the Restricted Area Register. If there is any doubt as to the identity of the individual prior to permitting entry, the entry control clerk should ensure, to their satisfaction, the identity of the individual prior to permitting entry. The Authorized Access List will be prepared, dated, and approved by the restricted area supervisor. A new list should be prepared for each month.

Minimum Protection Standards (MPS)

Secured Area

A secured area is an area that prevents undetected entry when not occupied by regularly assigned employees.

For purposes of providing protection, all space can be classified as either secured or non-secured.

Secured areas are perimeter and/or internal areas which have been designed to prevent undetected entry by unauthorized persons during non-duty hours. To qualify as a secured area, space must meet the following minimum standards:

1. Space must be enclosed by:

- Slab-to-slab walls constructed of approved materials and supplemented by periodic inspection or other approved protection methods; or

- Any lesser type partition (floor to ceiling walls are required for IRS perimeters) supplemented by Underwriters Laboratories approved electronic intrusion detection and detection systems.

2. Unless electronic intrusion detection devices are utilized, all doors entering the space must be locked, and strict key or combination control should be exercised.

Space which does not meet the above criteria, cannot be considered as a secured area, since it does not provide adequate security for protected items.

The Minimum Protection Standards (MPS) system is the method utilized by the Internal Revenue Service to provide basic safeguards to documents and facilities. Federal and State agencies should use this illustration of the MPS system as a guide for providing comparable safeguards for tax returns or return information in their possession. Federal and State agencies are not required to use the exact same methods that the Internal Revenue Service utilizes. Agencies are required to have comparable safeguards for the protection of tax data.

The Minimum Protection Standards (MPS) system establishes a uniform method of protecting data and items which require safeguarding. This system contains minimum standards which will be applied on a case-by-case basis. Since local factors may require additional security measures, management must analyze local circumstances to determine space, container, and other security needs at individual facilities. The MPS has been designed to provide management with a basic framework of minimum security requirements which will provide greater flexibility in dealing with local conditions.

The following describes the MPS and the concepts of protectability using the MPS.

Protected Items/Data

Items and data to be protected are divided into three groups:

1. *Special Protection*—Items which require a specific type of containerization, regardless of the area security provided, due to special access control needs. This group of items is divided into three subcategories.

- Level 1 (SP-1) —requires storage in a safe or vault;

- Level 2 (SP-2)—requires storage in a security container;

- Level 3 (SP-3)—requires storage in a locked container.

Examples of items designated as special protection are:

SP-1 Classified Information—Secret/Top Secret
SP-2 Classified Information—Confidential
SP-1 Combination Records—Forms 4032—safes and vaults
SP-2 Combination Records—Forms 4032 for container or doors
SP-3 Annual Listing of Undelivered Refund Checks
SP-2 Grand Jury—Case files and information
SP-2 Passwords and Password Registers
SP-2 Informant Communications File
SP-2 Informants Claims for Reward
SP-2 Informants Control File
SP-3 Internal Audit/Internal Security Reports
SP-3 Key—to any locked container
SP-2 Key—to any room, area, secured area, or security container
SP-2 Limited Official Use Documents

2. *High Security*—items which require greater than normal security, due to their sensitivity and/or the potential impact of their loss or disclosure. Examples of items designated as high security are:

- Legal Case Files

- Magnetic Media—all discs, tapes or similar media which contain program, taxpayer, or other individual data

- Disclosure Records—relative to disclosure made to the Department of Justice, Executive Department, or Congressional Committees

- Criminal Investigation Records—including all open or closed project files, case files, correspondence, activity reports, and other material which contains taxpayer data or third party information acquired in connection with a planned, open, or closed case

- Fraud Referrals—all case files, correspondence, or related documents which contain information regarding items referred to Criminal Investigation

- Examination Selection Criteria and Formulas, Cycle Variables and Volume Controls

- Microfilm—all cartridges, cassettes, or other microfilm media which contain taxpayer data or account information

High security items must be stored using methods identified in Exhibit 1.

3. *Normal Security*—All tax data or privacy act information which has *not* been identified as requiring High Security or Special Protection, which contains taxpayer, privacy act, or other protected information.

Exhibit 1 should be used as a graphic aid in determining alternate methods of safeguarding protected items. Available methods of protection include the use of secured perimeter or area space and/or containerization.

Locks

The lock is the most accepted and widely used security device for protecting installations and activities, personnel, tax data, classified material and government and personal property. All containers, rooms, buildings, and facilities containing vulnerable or sensitive items should be locked when not in actual use.

However, regardless of their quality or cost, locks should be considered as *delay devices only*, and not complete deterrents. Many ingenious locks have been devised, but equally ingenious means have been developed to open them surreptitiously. Some types of locks require considerable time and expert manipulation for covert opening, but all will succumb to force with the proper tools. Therefore, the locking system must be planned and used in conjunction with other security measures if a high degree of security is to be obtained.

Types of Locking Devices

Locks that are currently available range from the very simple (and easily defeated) variety through highly developed keylocks, to combination locks, and even include the highly sophisticated electronic-coded switches.

The degree of protection afforded by a well-constructed vault, safe, or filing cabinet may be measured in terms of the resistance of the locking mechanism to picking, manipulation, or drilling. Two major types of locking devices are:

Key Locks—The time for picking most standard pin-tumbler locks (including those that are specially keyed) ranges from a few seconds to a few minutes. High-security key locks are also vulnerable to surreptitious defeat; however, such defeat is much more difficult. In most cases, a special tool is devised for opening a particular lock. The possibility of the loss and compromise of a key and the possibility of a duplicate being made should also be considered in determining the security value of a key-type lock. Keys should be issued only to persons having a need to have access to an area, room, or container. The number of duplicates should be kept to a minimum. The key issued to an individual will be kept with the individual and not left in desk drawers or other unsecure places.

A Custody Receipt should be used to record the issuance of all keys.

Someone should be responsible for periodically reviewing and reconciling all key and combination records.

Exhibit 1:
Protection Alternative Chart

Protected Item Classification	Perimeter Type	Interior Type	Container Type
Special Protection Items:			
SP-1	N/A	N/A	safe/vault
SP-2	N/A	N/A	security container
SP-3	N/A	N/A	locked container
High Security Items:			
Alternative 1	Secured	N/A	locked container
Alternative 2	N/A	Secured	N/A
Alternative 3	N/A	N/A	security container
Alternative 4	Secured	Controlled	N/A
Normal Security Items:			
Alternative 1	Secured	N/A	N/A
Alternative 2	N/A	N/A	locked container

N/A = Not Applicable

Combination Locks—This popular type of lock is incorporated in padlocks, vaults, and doors. Combination locks have several advantages over key locks. First, a combination lock may have many possible combinations, effectively eliminating the possibility of opening the lock by dialing all possible combinations. Second, there is no key which can be lost or compromised. Finally, and most important, modern versions of the combination lock are highly resistant to all forms of undetected attack because no direct access to the lock mechanism itself is required for normal operation. There are several different types of combination locks offering varying degrees of protection. The best types are the "manipulation resistant" locks. The locks meeting requirements of FSS Specification FF-P-110, are considered the most suitable for securing lock bar filing cabinets and similar containers.

Inspection and Maintenance Procedures for Locks

A periodic inspection by the Security Officer should be made on all locks to determine the locking mechanism's effectiveness, detect [illegible]ing, and to make replacements. [illegible]ay be accomplished by inserting a "test key" (any comparable key other than the assigned key) no more than one-quarter inch into keyway. Turn test key by hand, using the normal amount of force required to open lock. If the lock opens during inspection, it should be replaced immediately.

Periodic preventive maintenance of locks should be performed to ensure adequate lubrication, rust prevention on outer surfaces, and clearing of dust and moisture from keyways. Combination locks must also be serviced (cleaned and greased). By periodic servicing, the life of a combination lock can be greatly extended.

Control and Safeguarding of Keys and Combinations

Access to a locked area, room, or container can only be controlled if the key or combination is controlled. As soon as the combination is obtained by an unauthorized person or otherwise compromised or the key is lost, the security provided by that particular lock is lost.

The combination to each lock will be changed:

- when the safe or lock is originally received,
- at least once each year,
- when an employee who knows the combination retires, terminates employment, or transfers to another office job, or
- whenever the combination is compromised in some other way.

Combinations should be given only to those who have a need to have access to the area, room, or container. Combinations should not be written on calendar pads, desk blotters, or any other item even though it is carried on one's person or hidden away. A record of combinations should be maintained.

Combinations for other than safes and vaults, and accountability records for container keys, should be maintained by the management. These records should include an inventory of total keys available for each container.

Envelopes containing combinations should be placed in a container with the same or a higher security classification as the highest classification of the material authorized for storage in the container or area the lock secures.

One key to all space, properly identified as to the door(s) it will open, should be maintained in a central location.

Locking Systems for Secured Areas. Minimum requirements for locking systems for Secured Areas are as follows:

1. High Security pin-tumbler cylinder locks which meet the following requirements must be used to secure doors to Secured Areas after normal duty hours.

- Key-operated mortised or rimmounted dead bolt lock.
- Have a dead bolt throw of one inch or longer.
- Be of double cylinder design. Cylinders are to have five or more pintumblers.
- If bolt is visible when locked, it must contain hardened inserts or be made of steel.
- Both the key and the lock must be "Off Master." Convenience type locking devices such as card keys, sequenced button activated locks used in conjunction with electric strikes, etc., are authorized for use only during duty hours.

2. All locks and keys to secured areas should be numbered with an unrelated number system.

3. Keys to secured areas not in the personal custody of an authorized employee, and any combinations, should be stored in a security container with a 3 position combination lock.

4. The number of keys or knowledge of the combination to a secured area should be kept to the absolute minimum. Keys and combinations should be given only to those individuals, preferably supervisors, who have a frequent need to access the area after duty-hours.

Padlocks should be locked to the staple or hasp, or placed inside the container, when the area or container is open, to preclude theft, loss, or substitution of the padlock.

Security Container—To maintain the integrity (preserve the rating) of the security container (lateral), two keys and only two keys should be available for each lock. If the central core of a security container lock is replaced with a non-security lock which has more than two keys, then the container would not qualify as a security container.

A recent development is the magnetic padlock which uses a magnetic key. The key is operated by placing the key on the side of the lock and not by inserting the key into the lock. This lock is not authorized for use within the Internal Revenue Service.

Automatic Detection Equipment

There is a variety of automatic detection equipment. These include, but are not limited to, door and window contacts, motion detectors, sound detectors, photo electric beams, pressure plates, window tapes, vibration sensors, and pressure switches. These are all designed to set off an alarm at a given location when the sensor is disturbed.

Care must be taken in selecting the right equipment to meet the requirement. In any case, the installation must comply with Underwriters' Laboratories, Inc., Standards for Safety 681, Installation No. 1, except that walls, floors, and ceilings need not be protected.

All alarms should annunciate at a protection console, a central station, or local police station where a timely response is available.

Security During Office Moves

When it is necessary for an office to move to another location, plans must be made to properly protect and account for all tax data and other information, as well as government property. Careful consideration must be given to the circumstances of the move, the distance involved and the method to be used in making the move. Tax documents and other information will be in locked cabinets or sealed packing cartons while in transit. Accountability will be maintained to ensure that cabinets or cartons do not become misplaced or lost during the move. IRS material will remain in the custody of an agency employee and accountability will be maintained throughout the move.

Handling, Transmission, and Disposition of Tax and Tax Related Information

Handling

The handling of tax and tax-related documents must be such that the documents do not become misplaced, or available to unauthorized personnel. Only those employees who have a need to know will be permitted access to tax and tax-related information.

Transmission

Any time tax information is transmitted from one location to another, care must be taken to provide safeguards. In the event the material is hand-carried by an individual in connection with a trip or in the course of daily activities, it must be kept with the individual. If it becomes necessary to leave the material in an automobile, it must be locked in the trunk with the rest of the car locked, and then left for only a short period. Hotel and motel rooms are usually not good locations to secure tax information.

All shipments of tax returns and return information (including magnetic media and microfilm) will be documented on a transmittal, and monitored to ensure that each shipment is properly and timely received and acknowledged.

Disposal of Tax Information Upon Completion of Use

The Tax Reform Act of 1976 requires that certain actions be taken by users of Federal tax infromation upon completion of use of the information in order to protect its confidentiality.

Agency officials and employees will either return the information (including any copies made) to the office from which it was originally obtained or make the information undisclosable and include in the agency's annual report a description of the procedures utilized.

The following precautions should be observed when Federal tax information is destroyed:

- Material furnished by the Service and recipient-generated material such as extra copies, photoimpressions, computer printouts, carbon paper, notes, stenographic notes and work papers should be destroyed by burning, mulching, pulping, shredding, disintegrating, or handcutting.

- Burning precautions: The material is to be either burned in an incinerator that produces enough heat to burn the entire bundle or the bundle should be separated to insure that all pages are consumed.

- Shredding precautions to make reconstruction more difficult: The paper should be inserted so that lines or print are perpendicular to the cutting line; small amounts of shredded paper should not be allowed to accumulate in the shredder bin. The paper should be shredded to effect 5/16-inch wide or smaller strips, microfilm should be shredded to effect a 1/35-inch strip.

- Pulping should be accomplished in such a manner that all material is reduced to particles one inch or smaller.

- Disintegrating should be accomplished with a ½-inch or smaller screen.

Federal tax data in identifiable form must never be released to private contractors for unsupervised destruction. Destruction of the data should be witnessed by an agency employee in a manner sufficient to safeguard the data from unauthorized disclosure.

Inspections

After it has served its purpose, magnetic tape containing Federal tax data must not be made available for reuse by other offices or released for destruction without first being subjected to electromagnetic erasing. If reuse is not intended, the tape should be destroyed by cutting into lengths of 18 inches or less or by burning to effect complete incineration.

Whenever disk media leaves the physical or systemic control of the agency for maintenance, exchange or other servicing, any Federal tax information on it must first be destroyed as provided below. If reuse is not practical, the infromation recorded on the disc will be destroyed by:

- Completely overwriting all data tracks a minimum of three times, using maximum current that will not damage or impair the recording equipment; or

- running a magnetic strip, of sufficient length to reach all areas of the disc over and under each surface a minimum of three times.

If the information cannot be destroyed as indicated, the disc will be damaged in an obvious manner to prevent use in any disc drive unit and discarded.

The safeguard requirements cease to apply to any return or return information to the extent that they are disclosed in the course of any judicial or administrative proceeding and to the extent that they are made a part of the public record thereof.

Periodic inspections should be conducted during the year to ascertain that safeguards are adequate. These safeguard reviews should be accomplished pursuant to written procedures which provide for inspection of all local offices by your headquarters. A complete record should be made of each inspection, citing the strong points, as well as deficiencies, and corrective actions taken if appropriate.

The inspection records will be filed in a separate folder, and for purposes of meeting Internal Revenue Code, Section 6103(p)(4) requirements, will be retained for a period of three years or until reviewed by the Internal Revenue Service.

Safeguard inspections should include the following items:

1. the storage and handling of Federal tax information
2. a review of how access to Federal tax information is granted to employees.
3. an assessment of facility security features
4. verification that Federal tax information has not been commingled with other information in such a way that its confidentiality could be inadvertently compromised
5. after-hours security
6. review of who has access to combination safes and changing of combination safes and changing of combinations
7. analysis of security procedures and instructions to employees
8. review of the Automatic Data Processing Operations
9. control and storage of magnetic tapes
10. audit of the file room activity
11. interviews of those charged with security responsibilities
12. review of planned organizational changes to assure that security considerations are covered.
13. a review of procedures and records when disposing of or rendering destroyed tax information no longer needed by the recipient.

The Tax Reform Act of 1976 provides that safeguards are subject to review by the Internal Revenue Service and the United States General Accounting Office, including your written procedures and inspection findings. If there are inspections other than those performed internally or by the Internal Revenue Service or United States General Accounting Office, access to Federal tax information may not be permitted without IRS approval.

The thoroughness and results of your internal inspections will weigh heavily in determining the frequency and extent of the reviews conducted by the Internal Revenue Service.

The Effect of Refund Offsets for Delinquent Child Support Payments

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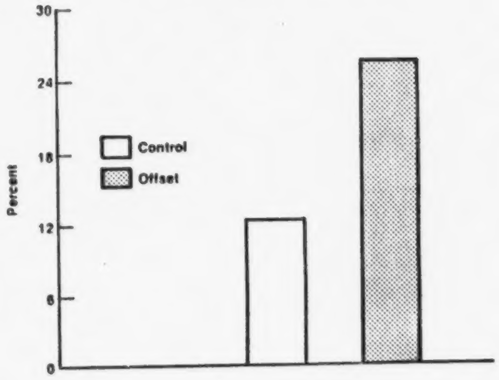
Department of the Treasury
Internal Revenue Service
February, 1984

I. Key Findings

A. **Change in Filing Patterns:** Of the taxpayers with a tax year 1981 (TY81) refund offset, almost 26 percent did not file a tax year 1982 (TY82) return as of the end of September 1983. As shown in Chart 1, this is more than twice as many as the control group[1] (12 percent). Since the refund offset is the only critical tax-related item that differentiates these two groups of taxpayers, the refund offset is a highly probable cause for the disproportionate number of non-filers noted.

Chart 1. TY81 Refund Cases Without A TY82 Tax Return



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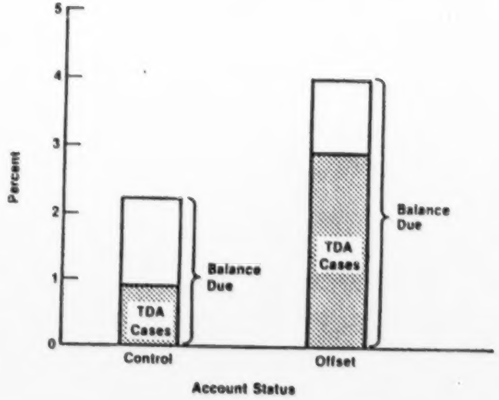
[1] The control group is a stratified sample of refund returns without a refund offset for delinquent child support that parallels the refund offset group in terms of taxable income and filing status.

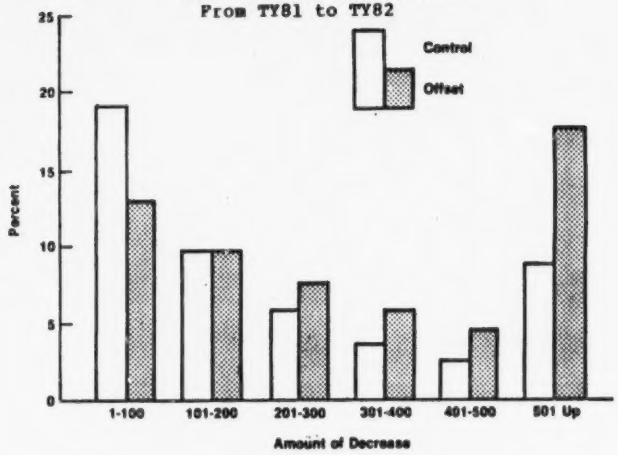
B. **Changes in Tax Payment Delinquency Rates:**
As depicted in Chart 2, refund offset cases were almost twice as prone to be balance due[2/] cases in the subsequent tax year as control group cases. Refund offset cases also were three times as likely to result in a Taxpayer Delinquency Account (TDA). Balance due returns and especially TDA's represent a serious financial burden on the Service as additional field resources are expended in an effort to collect the tax liability.

Chart 2. TY81 Refund Cases That Became TY82 Balance Due and TDA Cases



[2/] Balance due returns are all those where a tax liability was still outstanding after a notice was sent to the taxpayer, as of September 1983. These cases may be paid or otherwise resolved as a result of notices mailed to taxpayers. Where a series of four notices does not achieve closure, the balance due case moves to the status of Taxpayer Delinquent Account (TDA), and is referred for further collection action to personnel in IRS field offices.

Chart 3. Refund Decrease
From TY81 to TY82



C. **Changes in Size of Refund:**
A significant decrease was noted from TY81 to TY82 in the number of the refund returns available for offset. About 60 percent of the refund offset cases had a smaller refund for TY82 than for TY81 as compared to 50 percent for the control group. The size of the decrease was also more pronounced for the refunds of the taxpayers who had been offset (see Chart 3). This decline was due to a decrease in the number of dependents claimed on their returns, rather than any apparent change in withholding. Since the number of dependents claimed declined significantly, the excess withholding which normally would have resulted in refunds was absorbed by the increased tax, thus mitigating the incentive to initiate a change in withholding.

D. **Changes in Withholding Patterns:**
Changes in withholding patterns could not be measured with any precision due to study limitations. [See "Study Methodology and Limitations".] The ratios of withholding to salary analyzed for the year after the initial offset do not reflect a significant difference between the refund offset group and the control group. A ratio of withholding to salary was analyzed because examination of actual W-4 withholding statements at the taxpayer's place of employment was not possible for this study. It must be recognized that insufficient time (six months at best) had elapsed for a change in the withholding/salary ratio to make itself evident in the tax system. Taxpayers must have been notified of the refund offset, realized that a change to withholding could be used to circumvent offsets in subsequent years, and instituted the change in the payroll system.

E. Changes in Number of Dependents Claimed:

Taxpayers with a refund offset reduced the number of dependents claimed on the TY 82 tax return as compared to the TY81 tax return. (See Chart 4.) Since these taxpayers had not actually provided child support payments, they could not legally claim the child as a dependent; they may have connected illegally claimed dependents with the refund offset. A reduction in the number of dependents claimed on the tax return may have reduced or completely eliminated the refund that would have otherwise been expected, without the taxpayer taking specific action to change withholding.

A comparison of the change in the number of dependents claimed by the control group (see Chart 5) shows very little difference between TY 81 and TY82.

Chart 4. Dependents Claimed by Offset Group for TY81 and TY82

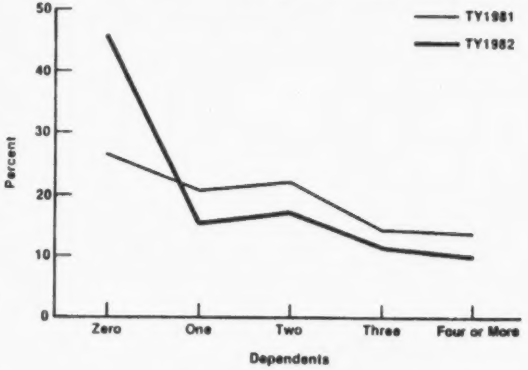
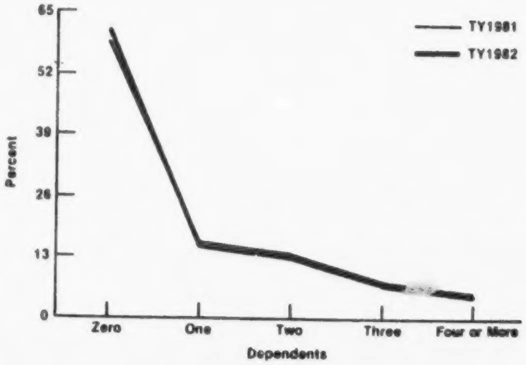


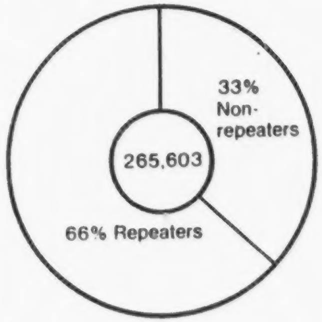
Chart 5. Dependents Claimed by Control Group for TY81 and TY82



F. **Success Rate for Refund Offset:**[3]

The number of cases referred to the Service by the Office of Child Support Enforcement has increased from 547,000 in processing year 1982 to 821,000 in processing year 1983. While the percentage of referral cases that match the IRS file of individual taxpayers remained constant between the two years, the percentage of cases that resulted in an actual refund offset for delinquent child support payments declined from 51 percent in 1982 to 39 percent in 1983 (through August). The average offset amount also declined during this period from $624 to $526 per offset cases.

Chart 6. TY81 Refund Offset Cases in TY82



G. **Effect of Refund Offsets on Program Repeat Rate:**

Out of a total of 265,603 taxpayers actually subjected to refund offset in TY81, 175,526 (66 percent) were referred to the IRS by the State agencies again for TY82. (See Chart 6.)

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[3] These data are approximations based on information manually compiled from operational data processed on a calendar year basis, irrespective of the tax year. Processing year 1982 would generally, but not exclusively, include tax year 1981 returns and processing year 1983 would generally include tax year 1982 returns.

II. Study Methodology and Limitations

A. Study Methodology:

The Internal Revenue Service received a mandate in Public Law 97-35, the Omnibus Reconciliation Act of 1981, to offset individual income tax return refunds to collect delinquent child support from taxpayers referred by the States through the Office of Child Support Enforcement of Health and Human Services (HHS). Participation by the States in this program is also mandatory under the Act. All of the TY81 referral cases (465,535) that matched the IRS file of individual taxpayers were selected as the study group for this analysis. The study group was then divided into two groups, those with an offset for delinquent child support payments (265,603) and those with no offset (199,932), which were both tracked from TY81 to TY82 to compare filing and withholding patterns. The primary focus of this analysis was on the refund offset group to determine the changes in filing and withholding patterns that may have been stimulated by the offset, as compared with a control group. The control group, a stratified sample of 153,429 refund returns having no refund offset for delinquent child support, paralleled the refund offset group in terms of taxable income and filing status.

B. Study Limitations:

Changes in withholding patterns were unable to be measured with precision. The most accurate approach to determine if there had been a change in withholding would be an examination and comparison of Forms W-4 filed by the taxpayer with the employer. This would have involved contacting employers to obtain the information. Since no tax liability issue was involved, this option was not exercised. Therefore, the analysis of withholding patterns was restricted to a ratio of withholding to salary, i.e., data available on IRS files.

Selection of a control group represents another limitation. The ideal control group would have been a sample of delinquent child support cases where a refund available for offsetting would purposely not have been offset. This would have assured that any significant differences between the control group and the offset group could have been completely attributed to the refund offset. This, of course, would have violated the concept of equitable enforcement of the referrals offset provisions of Public Law 97-35.

Instead, a stratified sample of refund cases without a refund offset for delinquent child support was selected to parallel the refund offset cases in terms of taxable income and filing status. However, there are numerous other factors such as number of dependents claimed, size of refund, deductions, and credits that were not able to be incorporated into the selection criteria of the control group because of lack of available stratified data. In addition, it would be impossible to select a control group that would reflect the asocial characteristic of the group under study, i.e., their refusal to pay legally mandated support which forced their families onto public assistance.

Because of these limitations, caution must be used when projecting the findings of this analysis into other areas of non-tax debt collection through the refund offset method.

III. Future Action

While the actual effect on withholding behavior may not yet accurately be determined, given the inherent limitations of the study data, the increase in non-filing is noteworthy. The Service will continue to follow TY81 refund offset cases in a third year (TY83) to measure the long-term effects of the refund offset program on the tax system.

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June 12, 1984

The Honorable William S. Cohen
Chairman
Subcommittee On Oversight of
Government Management
Committee on Governmental Affairs
S.D. 326
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for the opportunity to express my views on taxpayer privacy issues at the June 6, 1984 Subcommittee hearing, particularly the proposals contained in the pending tax bill to permit disclosure of tax information to State and local welfare agencies.

As I stated in my testimony, I believe that Code section 6103 already contains far too many exceptions to the general rule that tax information is confidential. In fact, I believe that the list of permissible disclosures could be shortened to five categories and still achieve a fair balance between taxpayer privacy interests and the legitimate needs of Federal, State and local governments for information. These are:

(1) Disclosure for Federal and State tax purposes

Under this category, disclosure could be made to:

-- The taxpayer, his designee and persons having a material interest in the information sought to be disclosed, such as partners of a partnership or shareholders of a corporation [sections 6103(c) and (e)].

-- State tax officials and audit agencies [section 6103(d)];

-- Federal agencies, including the Department of the Treasury, for such purposes as determining civil or criminal liability under the tax laws [sections 6103(h)(1),(2),(4), and (5)];

- The Social Security Administration and the Department of Labor for purposes of administering the OASDI program and ERISA, respectively, to which specific provisions of the Internal Revenue Code relate [sections 6103(h)(6), (*l*)(1) (scaled back to cover only Title 2 of the Social Security Act), (*l*)(2) and (*l*)(5)];

- Other agencies and persons for tax administration purposes [6103(k)].

(2) Disclosure to Committees of Congress and the General Accounting Office [sections 6103(f) and (i)(7)].

(3) Disclosure to the President [section 6103(g)].

(4) Disclosure to Federal officers or employees for nontax criminal law enforcement purposes.

Insofar as disclosure is permitted under sections 6103(i)(1) and (4) only by court order, these exceptions might be retained without risk of undue intrusion on privacy interests. There is also justification for retaining section 6103(i)(2), permitting limited disclosure of return information other than taxpayer return information, and section 6103(i)(3)(B)(i), which permits disclosure where an individual is in imminent danger of death or physical injury.

(5) Disclosure for Statistical Use [section 6103(j)], but any effort to expand the application of this subsection should be resisted.

Except as indicated above, and with the possible further exception of section 6103(m)(3), permitting disclosure for the purpose of locating individuals who have been exposed to occupational hazards, sections 6103(i) through (m) should be repealed, particularly the following, which I believe to be the worst offenders:

(1) Disclosure of a taxpayer's identity for purposes of preparation of commercial credit reports [section 6103(m)(2)(B)];

(2) Disclosure of identities of individuals who have defaulted on student loans [section 6103(m)(4)].

(3) Disclosure to apprise officials of possible violations of Federal criminal law or imminent flight from Federal prosecution, and disclosure to locate fugitives from

justice [sections 6103(i)(3)(A),(B)(ii) and (5)]. These provisions tend to make IRS a handmaiden of the Justice Department.

(4) Disclosure of information regarding applicants for Federal loans [section 6103(*l*)(3)];

(5) Disclosure to Federal, State and local child support enforcement agencies [sections 6103(*l*)(6) and (8)];

(6) Disclosure to the Department of Agriculture and State Food Stamps agencies [section 6103(*l*)(7)];

I applaud your efforts to curb computerized encroachment on privacy interests and the attendant problems this creates for fair and effective administration and enforcement of the tax laws.

Sincerely,

Don Alexander

Donald C. Alexander

The Direct Mail/Marketing Association's Suggested Guidelines for Personal Information Protection

The Direct Mail/Marketing Association's Personal Information Protection Guidelines are intended to provide individuals and organizations involved in direct mail and direct marketing with principles of conduct that are generally accepted. These Guidelines reflect DMMA's long-standing regard for personal privacy and the responsibility of direct marketers to the consumer—a relationship that must be based on fair and just principles.

These Guidelines are also a part of the DMMA's general philosophy that self-regulatory measures are more desirable than governmental mandates whenever possible. Self-regulatory actions are more readily adaptable to changing techniques, economic and social conditions, and they encourage widespread use of sound and responsible business practices.

Because it is believed that a concern for everyone's privacy with respect to truly personal information is a basis for good business practices within direct response marketing, observance of these Guidelines by all concerned is recommended.

The Direct Mail/Marketing Association recognizes the need for businesses to protect the personal privacy of individuals and their need to provide safeguides for the proper handling of personal data contained in data files. DMMA strongly believes that good business practices require respect for such expectations of the individual.

Accordingly, DMMA recommends the following Guidelines for the handling of personal data in data files.

For purposes of these Guidelines, the following definitions apply:

Individual: A natural person identified in a file by name and address or other identifier.

Personal Data: Information which is linked to an individual on a file and which is not publicly available or observable.

Direct Marketing Purposes: The purposes of direct marketing are to promote, sell and deliver goods and services; to foster such efforts through the sale, rental, compilation or exchange of lists accordance with the principles of these Guidelines; to delete and add individuals to lists; to provide all necessary customer services including the extension of credit where appropriate; to raise funds; to perform market research and to encourage recipients to respond by taking direct action.

Article 1. Personal data should be collected by fair and lawful means for a direct marketing purpose.

Article 2. Direct marketers should limit the collection of personal data to only those data which are deemed pertinent and necessary for a direct marketing purpose and should only be used accordingly.

Article 3. Personal data which are used for direct marketing purposes should be accurable, complete and should be kept up to date to the extent practicable by the direct marketer. Personal data should be retained no longer than is required for the purpose for which they are stored.

Article 4. An individual shall have the right to request whether personal data about him/her appear on a direct marketer's file and to receive a summary of the information within a reasonable time after the request is made. An individual has the right to challenge the accuracy of personal data relating to him/her. Personal data which are shown to be incorrect should be corrected.

Article 5. Personal data should be transferred between direct marketers only for direct marketing purposes. Every list owner who sells, exchanges or rents lists containing personal data should see to it that each individual on the list is informed of those practices (Self Disclosure), and should offer an option to have the individual's name deleted. The list owner should remove names from his/her lists when requested dfirectly in a signed writing by the individual, or by use of the DMMA Mail Preference Service name removal list.

List brokers and compilers should take reasonable steps to have the list owner follow these list practices.

Personal data should not be put at the disposal of any third party except as set forth in these Guidelines, or with the express consent of the individual, unless required by law.

Article 6. All list owners, brokers and compilers should be protective of the individual's right to privacy and sensitive to the information collected on lists and subsequently considered for transfer.

Personal information supplied by individuals such as, but not limited to, medical, financial, insurance or court data should not be included on lists that are rented or exchanged when there is a reasonable expectation by the individual that the information would be kept confidential.

Article 7. Each direct marketer should be reponsible for the security of personal data. Strict measures should be taken to assure against unathorized access, alteration or dissemination of personal data. Employees who have access to personal data should agree in advance to use those data only in an authorized manner.

Article 8. Visitors to areas where personal data are processed and stored should be specifically authorized by express permission of the direct marketer and should be accompanied by at least one authorized employee of the direct marketer.

Article 9. If personal data are transferred from one direct market to another for a direct marketing purpose, measures should be taken by the transferor to arrange strict security measures to assure that unauthorized access to the data is not likely during transfer procedures. It is the reponsiblility of the direct marketer to whom the list is transferred to arrange strict security measures to insure no unauthorized access to the list during its return to the original owner.

Article 10. The Committee on Ethical Business Practices of DMMA is charged with reviewing any complaints by individuals of violation of these Guidelines and shall take appropriate action.

DMMA ETHICS DEPARTMENT

In its continuing efforts to improve the image of direct mail and direct marketing, DMMA sponsors several activities in its Ethics Department.

Ethical Guidelines are maintained, updated periodically and distributed to the field.

A Committee on Ethical Business Practice monitors the mails and direct offerings to the consumer and investigates complaints brought to its attention.

An Ethics Policy Committee initiates programs and projects directed toward improved ethical activity in the direct marketing area.

MOAL (Mail Order Action Line) handles consumer mail order complaints and MPS (Mail Preference Service) offers mail flow reduction or increased specialized mail to consumers.

All Ethics activities are directed by a full time Director of Ethical Practices.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN

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May 1, 1984

The Honorable Charles A. Bowsher
Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

On June 6, the Senate Subcommittee on Oversight of Government Management will hold a hearing on the transfer of tax return information from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) to other government agencies. Specifically, the hearing will address the transfer of such information to federal and state agencies for their use in verifying recipient eligibility for entitlement programs, and the IRS' collection of private sector data to identify cases of non-filing or underreporting of income.

Accordingly, I ask that the General Accounting Office submit a written statement for the hearing record outlining the GAO's views, based on your past and on-going work, on the transfer of IRS unearned income data to federal and state agencies for eligibility verification.

It would be most useful to the Subcommittee if your statement would address the following issues:

(1) the advantages and disadvantages of the transfer of IRS and SSA data to other government agencies for use in computer matching projects to verify eligibility for entitlement programs;

(2) the adequacy of the unearned income information maintained by the IRS and the SSA data now used by federal and state agencies for verifying recipient eligibility for entitlement programs;

(3) privacy and due process considerations including the SSA's and other federal requirements and procedures for safeguarding such data and maintaining computer security; and

(4) guidance that agencies might use in conducting computer matches and in following up on "hits" resulting from the matches.

I request that you provide me with three copies of your summary no later than May 25. Fifty additional copies should be provided on June 4 for distribution at the hearing. Please have your summary delivered to the Subcommittee on Oversight of Government Management, room 326 of the Dirksen Senate Office Building.

I appreciate your past and continuing assistance to the Subcommittee. If you have any questions, please have your staff contact Mary Gerwin of the Subcommittee staff at 224-5538.

With best wishes, I am

Sincerely,

Bill Cohen

William S. Cohen
United States Senator

WSC:mbg

GAO OBSERVATIONS ON THE USE OF TAX RETURN INFORMATION FOR VERIFICATION IN ENTITLEMENT PROGRAMS

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-214780

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
  of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your May 1, 1984, letter requested our views on the transfer of tax return data from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) to federal and state agencies for their use in entitlement programs. More specifically, in preparation for Subcommittee hearings scheduled for June 6, 1984, you requested that we address the following issues:

1. The advantages and disadvantages of the transfer of IRS and SSA data to other government agencies for use in computer matching projects to verify eligibility for entitlement programs.
2. The adequacy of the unearned income information maintained by IRS and the SSA data now used by federal and state agencies for verifying recipient eligibility for entitlement programs.
3. Privacy and due process considerations, including SSA and other federal requirements and procedures for safeguarding such data and maintaining computer security.
4. Guidance that agencies might use in conducting computer matches and in following up on "hits" resulting from the matches.

Out of concern for personal privacy, the Congress has restricted the disclosure of certain tax return information that would be useful for verifying earnings and assets in entitlement programs. States have access to SSA's earnings data for employees and self-employed persons for use in the Aid to Families with Dependent Children (AFDC) and Food Stamp programs and access to SSA's pension data for the Food Stamp program. The Congress has not authorized the disclosure of unearned income information from IRS for verification in entitlement programs.

Currently, the Congress is considering legislation to authorize the disclosure of additional tax return information related to unearned income and require that it and earned income information be used for verification in entitlement programs in addition to AFDC and Food Stamp. The information being considered for disclosure includes data that could be useful for verifying reported assets as well as income. In considering the use of additional tax data for verification purposes, it is necessary to consider the tax compliance and privacy implications.

In past reports and in testimony before your Subcommittee, we have supported the restricted use of the IRS and SSA data for verification in entitlement programs. Because of concerns about undermining the voluntary nature of the tax system, our recommendations generally were limited to the use of information reported to IRS or SSA by third parties, such as employers reporting wages or banks reporting interest, rather than using information reported directly by the taxpayers. However, there is one exception. We have recommended that self-employment earnings data, which are only reported by the taxpayer, be used to verify income in more entitlement programs than just AFDC and Food Stamp. Without this information, it would be difficult to adequately verify eligibility for self-employed individuals. Because of privacy concerns, our recommendations recognized the need for restricting the disclosure of tax return information to specific uses and requiring that the data disclosed are adequately safeguarded.

The appendix discusses (1) the tax return information currently authorized for disclosure for verification in entitlement programs, (2) the information being considered for disclosure, and (3) the information currently being disclosed. It provides details on the need for information for verification in entitlement programs; advantages and disadvantages of using the IRS and SSA data, including the adequacy of such data; privacy and due process considerations; and guidelines for conducting computer matching and following up on the results of the matches.

In preparing this report, we reviewed and analyzed relevant legislation and our past reports and testimony. Several ongoing studies also provided information related to the issues raised by the use of tax return information for verification in entitlement programs. In addition, we drew on our experience with computer matching. We have developed our own computer matching software and over the past several years have done extensive matching involving a variety of entitlement programs and agencies.

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As agreed with your office, we did not obtain comments from IRS and SSA on this report. Also, as agreed, we will release the report for public distribution after the hearings. At that time copies will be sent to other congressional committees, appropriate federal departments and agencies, and other interested parties.

We hope that this information will be useful for the Subcommittee's hearings and in its continuing work related to computer matching.

Sincerely yours,

Richard L. Fogel

Richard L. Fogel
Director

GAO OBSERVATIONS ON THE USE OF TAX RETURN INFORMATION FOR VERIFICATION IN ENTITLEMENT PROGRAMS

INTRODUCTION

The lack of data to verify income and assets reported by applicants and recipients in entitlement programs has contributed to significant overpayments--an estimated $1 billion for five programs in fiscal year 1982. Tax return information on earned and unearned income would help fill this need for data. The Congressional Budget Office estimated that $1.5 billion could be saved over a 5-year period in only three programs if unearned income information alone were made available.

The benefits which could accrue from using these data in entitlement programs and the lack of comparable alternative data sources argue strongly for disclosing the tax return information, if proper safeguards are in place to protect it. Because of privacy concerns and the potential impact on voluntary tax compliance, tax return information should only be disclosed for non-tax purposes when there is a compelling need. During disclosure and use of the information, agencies must ensure that it is adequately safeguarded to protect its confidentiality and that individuals' due process rights are observed.

The disclosure of tax return information to entitlement programs raises many technical questions about the nature of the data, what is involved in transferring the data, and how the data can be adequately protected. In addition, the process of computer matching itself creates concerns about guidelines to ensure that matches are performed properly and consistently.

The following discussion includes (1) the need for tax information for verification in entitlement programs, (2) descriptions of the tax return information being transferred or being considered for transfer to entitlement programs and the advantages and disadvantages of using the data, (3) privacy and due process concerns which should be considered in transferring and using the data, and (4) our observations on existing guidelines for conducting computer matches and follow-up.

NEED FOR IMPROVED VERIFICATION

Entitlement programs, both needs and insurance-based, comprise a substantial portion of the federal budget. In fiscal year 1985, more than $400 billion will be spent on over 100 such programs. Needs-based programs, which provide cash and non-cash aid primarily to persons with limited income, will account for about 20 percent of that amount.

Income and asset information reported by applicants and recipients is a key factor in determining eligibility and benefit amounts for most needs-based programs. Income is also a key factor in certain insurance-based programs. Incorrectly reported income and assets are major causes of overpayments in needs-based entitlement programs, largely because adequate data to verify them are not available, primarily due to legal restrictions. In a 1982 report, we estimated that in only five programs the federal share of overpayments based on such incorrect information would exceed $1 billion in fiscal year 1982.[1] Tax return information would help identify underreported income and assets.

Current and proposed disclosure of tax data

The Congress has restricted the disclosure of certain tax return information that would be useful for verifying income and asset information in entitlement programs. The Tax Reform Act of 1976, as amended, and the Social Security Act authorize states to have access to SSA earnings data for employees and self-employed persons for use in the Aid to Families with Dependent Children (AFDC) and Food Stamp programs. The Tax Reform Act also allows states access to SSA's pension data for use in the Food Stamp program. What is not currently authorized for disclosure is IRS' unearned income information from sources such as interest and dividends.[2]

Both the House and the Senate recently passed legislation amending the Tax Reform Act to permit additional disclosure of tax information to entitlement programs. In a move to strengthen eligibility verification, the House on April 12, 1984, passed H.R. 5394, which authorizes the disclosure of IRS unearned income information, such as interest and dividends, to federal, state, and local agencies for use in selected programs. The use of the data would be restricted to verifying data used in determining eligibility and correct benefit amounts in the programs, and safeguards against unauthorized disclosure would be required. The bill does not discuss earned income data.

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[1] Legislative and Administrative Changes to Improve Verification of Welfare Recipients' Income and Assets Could Save Hundreds of Millions, HRD-82-9, Jan. 14, 1982. The five programs discussed in this report are AFDC, Food Stamp, SSI, Medicaid, and Section 8 Housing.

[2] Tax data are used for other purposes, such as locating parents to collect child support, debt collection, and law enforcement.

The Senate recently passed its deficit reduction bill, which would require the disclosure of IRS unearned income data. Unlike the House bill, it also expands the disclosure of SSA earned and unearned income data. The Senate version would require that the data be disclosed at the request of federal, state, or local agencies administering selected entitlement programs. This bill would also restrict the use of the data to verifying data used in determining eligibility and correct benefit amounts and require safeguards to protect against unauthorized disclosure.

Procedures for maintaining and disclosing data

Both IRS and SSA collect earned and unearned income data that are considered tax return information. Some of the data are collected by one agency and shared with the other. Both agencies maintain the following data:

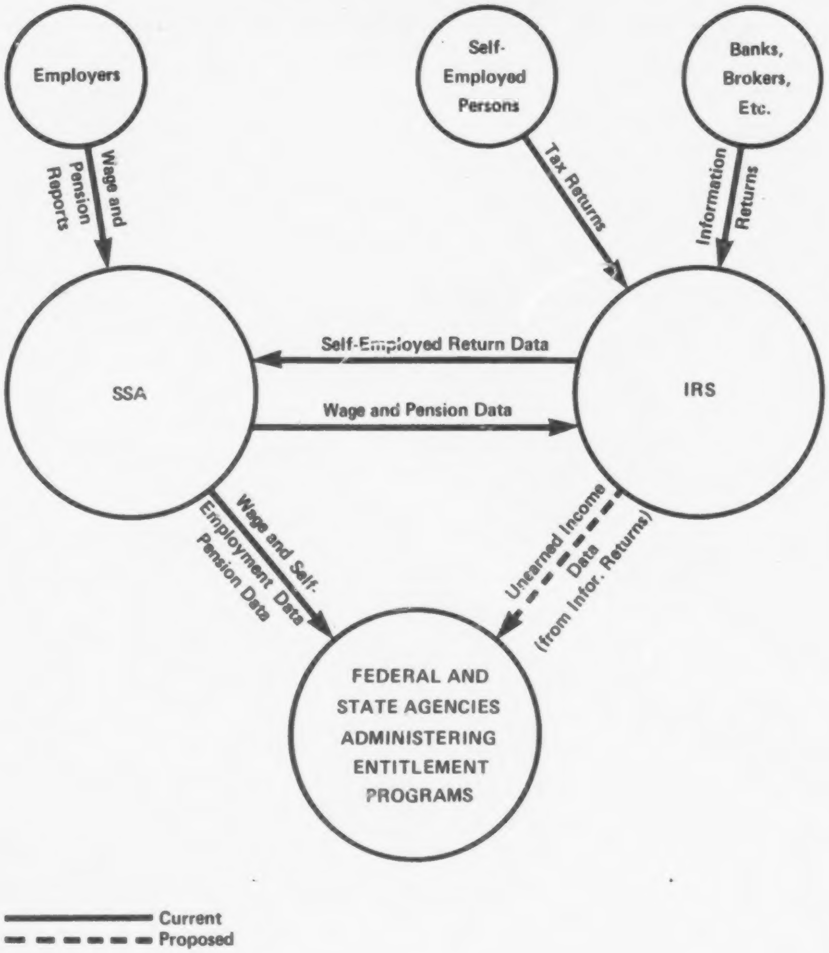
--Wages and other compensation reported by employers, collected by SSA, and shared with IRS.

--Pension payments reported by payers, collected by SSA, and shared with IRS.

--Earnings reported by the self-employed, collected by IRS, and shared with SSA.

In addition, IRS collects unearned income data, such as interest and dividends, to which SSA does not have access. Figure 1 shows the current and proposed authorized flow of tax return information through IRS and SSA to federal and state agencies administering entitlement programs.

FIGURE 1
TAX INFORMATION COLLECTION AND DISCLOSURE TO ENTITLEMENT PROGRAMS FOR VERIFICATION
(Current and Proposed Authorization)


Employers
Self-Employed Persons
Banks, Brokers, Etc.
Wage and Pension Reports
Tax Returns
Information Returns
SSA
IRS
Self-Employed Return Data
Wage and Pension Data
Wage and Self-Employment Data Pension Data
Unearned Income Data (from Infor. Returns)
FEDERAL AND STATE AGENCIES ADMINISTERING ENTITLEMENT PROGRAMS
Current
Proposed

IRS and SSA maintain the tax return information in centralized computerized files which would facilitate matching with computerized entitlement program files. Comparable information is not available from any other centralized source. We believe that computer matching using tax return information can be an effective method of verifying information reported by entitlement program applicants and recipients. However, such matches must be performed within the framework of the Privacy Act of 1974 and the Tax Reform Act of 1976.

We have not made comprehensive assessments of the accuracy or reliability of the IRS and SSA data being disclosed or being considered for disclosure. However, it should be recognized that these data are being used to determine eligibility and benefit amounts in Social Security programs and for tax administration. Currently and as proposed, the data disclosed would not be used as the primary data to determine eligibility or benefit amounts in entitlement programs, but to verify income or asset information reported by applicants and recipients used to determine eligibility and benefit amounts.

We recognize the need to strike a proper balance between the government's legitimate need for information to ensure program integrity and taxpayers' basic right to privacy with respect to tax information reported to IRS or SSA. Our position on the disclosure of tax return information has been guided by two basic principles. First, IRS' primary mission is to collect taxes and encourage and achieve the highest possible degree of voluntary compliance with the tax laws. Second, taxpayers who supply information to IRS or SSA have a basic right to privacy with respect to that information. Such information should be subject to disclosure for non-tax purposes only when society has a compelling interest which outweighs individual privacy concerns.

ADVANTAGES, DISADVANTAGES, AND ADEQUACY OF IRS AND SSA DATA

The primary disadvantages of using tax return information for verification in entitlement programs are the potential harmful effects on tax reporting compliance and personal privacy. The data also have some technical limitations or disadvantages. There are, however, advantages and benefits to using the data for this purpose which we believe outweigh the disadvantages.

Using tax return information for eligibility verification in entitlement programs could result in improvement in program integrity and the efficiency of the verification process. It would enhance the potential for reducing erroneous payments and provide sources of comprehensive, centralized data.

The IRS and SSA tax return information, however, does have some limitations. Neither the unearned income data at IRS nor the earned and unearned income data at SSA are current. In many entitlement programs, eligibility is based primarily on an applicant's current financial situation. Tax return data can only provide leads to identify unreported income or assets, rather than information that determines current eligibility or ineligibility. Without this information, however, eligibility workers might have no indication of past income or asset ownership.

Other disadvantages of the IRS data relate to the physical characteristics of the agency's computer files. The files do not contain some data elements, such as date of birth and sex, needed for sophisticated computer matching. In addition, the volume of data in the unearned income file is very large and is likely to grow.

IRS data

IRS maintains computerized files of information on unearned income paid to taxpayers. Payers of this income (e.g., banks, brokers) are required to report the payments by filing annual information returns. IRS uses this information primarily to identify unreported income and nonfilers of tax returns. IRS forms 1099 and 5498 are used to report interest, dividends, and other non-wage income paid to individuals. IRS maintains the unearned income data in a master file at its National Computer Center.

The information return master file is a very large, complex magnetic tape file. For example, the unearned income master file for tax year 1982 consists of about 540 reels of magnetic tape containing about 360 million records. These records are highly compressed in a complex variable length format. Further, the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) significantly broadened the information reporting requirements beginning with tax year 1983. For example, securities broker transactions, state and local income tax refunds, tip income, certain payments to independent contractors, and bartering transactions are new reporting requirements. TEFRA will significantly increase the number of return documents to be filed and thus the size of the master file.

Usefulness and limitations

The unearned income master file contains some data elements which could be useful for computer matching involving entitlement programs. For example, data elements in the master file include: (1) social security number, (2) payer identification number, (3) document type, (4) tax year, (5) dollar amounts, (6) ZIP code, and (7) name and address information. We believe that IRS' unearned income master file provides potentially useful, centrally located, and relatively accessible information about individuals' financial assets and income. For example, the unearned income data provide an indication of an individual's financial holdings, such as savings, checking, and other liquid asset accounts. These types of information could be useful in verifying an individual's eligibility for the entitlement programs. The Congressional Budget Office estimates that use of IRS' unearned income data in the Medicaid, Supplemental Security Income, and Food Stamp programs alone would save $350 million in fiscal year 1986, with a cumulative 5-year savings of $1.5 billion.[3]

The IRS information, however, has at least three limitations or disadvantages, one related to data quality and two related to the physical characteristics of the computer file. Data quality has essentially three dimensions: timeliness, accuracy, and reliability. The lack of timeliness is the key limitation of IRS' data. For example, IRS generally does not receive unearned income reports for a tax year before the end of February of the following year. Thus, this information may be anywhere from 2 to 14 months old when reported. Moreover, IRS processing does not result in a relatively complete master file until near the end of the year following the tax year for which the information returns are applicable. In other words, by the time the master file is complete, the unearned income information is an additional 10 months older. It should be recognized that IRS' system for collecting and processing unearned income was not designed to meet the timeliness requirements of the entitlement programs.

At this time, we cannot comment on the accuracy and reliability of IRS' information returns data. We have underway an audit to evaluate IRS' information returns processing systems.

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[3] Analysis of the Grace Commission's Major Proposals for Cost Control, Joint Study by the Congressional Budget Office and the General Accounting Office, February 1984.

One of its objectives is to determine whether these systems contain sufficient internal controls to ensure accurate and reliable data processing. It is important to note, however, that these data are used for administering the tax laws and would not be used as the primary data for determining eligibility or benefits in entitlement programs, but to verify data reported by applicants and recipients.

Another limitation of IRS' information returns data is that they do not contain some elements conducive to sophisticated and effective computer matching techniques. Data elements not found in the unearned income master file, which we have found useful in computer matching projects, are: (1) date of birth, (2) telephone number, (3) sex, and (4) electronic funds transfer number.

The third disadvantage of IRS' unearned income data relates to the size of the master file. As stated earlier, the volume of data in the file is very large and is likely to grow significantly as a result of TEFRA. Use of the master file for computer matching with entitlement program files may require IRS to change its file to a standard format to facilitate the matching. We believe that altering such a large file could require considerable computer processing time. The cost of this conversion could be significant.

SSA data

SSA maintains centralized files of wage, self-employment earnings, and pension payment data. Employers annually report wages and pension payments directly to SSA, while self-employed individuals report their earnings to IRS, which provides the data to SSA. SSA's files contain data elements useful for computer matching. For example, the files contain social security numbers, names, employers' identification numbers, tax years, and the amounts of earnings.

Current laws authorize SSA to provide, upon request, these three types of tax return information to states (and the Department of Agriculture for the Food Stamp program) for use in administering selected entitlement programs. Proposed legislation would make these data available to additional programs for verification of income. To date SSA has provided wage and self-employment earnings data to 18 states, but has not provided pension payment data to any state because none have requested the data.

Current uses

Currently, SSA discloses wage and self-employment data for verification purposes to the AFDC and Food Stamp programs. Nine states that do not have quarterly wage information available from their employment security agencies are required to obtain and use the data in these two programs. Current federal laws do not allow the use of the SSA data in other entitlement programs administered by the states. As recognized in the recently passed Senate deficit reduction bill, other programs could also benefit from the use of these data.

The 41 states that have quarterly wage information available from their employment security agencies may, but are not required to, use SSA's data. They are required only to use the state wage data. Some of these states have elected to use SSA's data to complement their state data. The Senate bill discussed earlier includes provisions that would require all states to collect quarterly wage data and to use both the state and SSA data in AFDC, Food Stamp, Medicaid, and Unemployment Insurance programs. Also, the territories would be required to use the SSA data to administer programs under titles I, X, XIV, and XVI of the Social Security Act. We believe that using both the SSA and state earnings data for verification in entitlement programs would be beneficial, because the SSA data would help compensate for the limitations of state data and vice versa.

Usefulness and limitations

SSA's earnings data are comprehensive in that they include virtually all employees, the military, and the self-employed. From this standpoint they are more useful than the states' earnings data, which cover only nonfederal employees.

The SSA information is less useful than it might be, however, because of its age. Employers and self-employed individuals are required to report earnings information only annually. This limits the usefulness of SSA's data for verification purposes, because earnings information available to verify applicants' and recipients' income may be over a year old. Therefore, from a timeliness standpoint SSA wage data are less useful than state wage data which are collected quarterly. We believe, however, that the SSA data are useful for determining employment in the prior year to provide leads for further verification of income and to help identify people receiving benefits in one state and working in another.

Although SSA has not provided its pension payment data to agencies for verification in entitlement programs, it maintains a centralized file of such data. It also maintains the only centralized self-employment earnings information outside IRS. Without access to this centralized information, it is difficult, if not impossible, for entitlement program managers to verify reported or identify unreported pension payments or self-employment earnings.

Again, we believe that entitlement programs would benefit from using all three types of SSA data and state wage data. Even if all states begin collecting quarterly wage data, SSA's data should be used periodically because SSA collects more comprehensive wage data and maintains centralized data on self-employment earnings and pension payments. Programs in addition to those included in the Senate bill could also benefit from use of the data. For example, programs with erroneous payments because of underreported income or assets, such as the Veterans Administration pension program, could also be considered as candidates for using the data.

PRIVACY AND DUE PROCESS CONSIDERATIONS

We believe that agencies receiving tax return information from IRS and/or SSA should be required to adequately safeguard the confidentiality of the data and to recognize individuals' due process rights in using the data. Laws and regulations governing the tax return data currently used in entitlement programs for verification (SSA wage and self-employment earnings data) require such safeguarding and recognize individuals' due process rights. Both the recently passed House and Senate bills, discussed earlier, include safeguarding provisions similar to existing law and to varying degrees include more explicit due process provisions. We have not assessed the implementation of current safeguarding requirements, but believe federal monitoring is necessary to ensure adequate protection of privacy.

The Tax Reform Act's provisions for safeguarding data, supplemented by the Social Security Act, apply directly or indirectly to data currently disclosed to entitlement programs. The Tax Reform Act requires all agencies receiving tax data to, among other things, maintain a system to account for disclosures, maintain a secure storage area for the data, restrict access to the data, and either return the information to IRS or properly dispose of it upon completion of its use. These provisions apply directly to SSA data provided to states for the Food Stamp program because the authority for release of the data is included in the Tax Code. The Social Security Act, however, provides the authority for the release of SSA data for use in the AFDC program. This act includes a general provision for safeguarding the data. IRS, however, considers the Tax Code provisions to also apply to the data released under the Social Security Act, because they apply to SSA as a federal agency described in the Tax Code.

Regulations covering the transfer of SSA data for use in the AFDC and Food Stamp programs require the states to negotiate written agreements with SSA governing the use of the data. These agreements must provide for safeguards, including computer security, limiting release or redisclosure of the information. However, because the authority to release the data comes from a different source for each program (the Tax Code for Food Stamp and the Social Security Act for AFDC), the regulations require each state to negotiate two agreements to obtain the SSA data. The agreements for the Food Stamp program must refer to the IRS guidelines implementing the Tax Code provisions for safeguards. The agreements for the AFDC program must include safeguards contained in separate SSA regulations on protecting wage data.

The Senate bill under consideration would place all disclosure authority for tax data under the Tax Code and thus would encourage uniform procedures for state agencies to follow in obtaining and safeguarding tax return information. We believe one agreement would be preferable, especially since the same state agency usually administers these two programs.

We inquired about SSA's monitoring of the states' adherence to their agreements and were told by SSA officials that the agency is developing guidelines for monitoring, but to date has not reviewed any state's procedures to comply with the agreements. We believe that monitoring the use and safeguarding of disclosed tax data is an important part of privacy protection, particularly as more information may soon be provided to federal and state agencies. We plan to review SSA's development and implementation of its guidelines.

SSA uses its Beneficiary and Earnings Data Exchange (BENDEX) system to disclose earnings data to states with which it has written agreements. The primary purpose of BENDEX is to provide states with Social Security benefit information on a monthly basis; however, states with wage disclosure agreements may request the addition of wage data.

To receive these data, states send their AFDC or Food Stamp recipient files to SSA, which matches them against its earnings files. Whenever matches occur, the earnings are annotated on the BENDEX file for transfer to the state. This exchange procedure, whereby the requesting agency sends its file to the source agency, is important to ensure that no unnecessary personal data are disclosed.

Use of data once obtained by agencies for income and asset verification raises privacy and due process questions beyond those related to safeguarding the data. These issues relate to involving individuals in the verification process and to helping ensure that benefits are not terminated improperly. For example, provisions that we believe are important include

--individuals applying for benefits should be informed that tax return information will be obtained to verify their eligibility;

--individuals should have access to any information about them that the agency obtains for the purpose of verification;

--no benefits should be terminated solely on the results of a manual or computer match; rather, the results should be confirmed by the agency administering the program; and

--the recipient should have the opportunity to refute any information before it is used to affect his or her benefits.

The security aspects of any agreements or procedures to transfer data are particularly important. Providing a reasonable level of information security in today's technological environment is a formidable challenge because the range of vulnerabilities is increasing. In addition, expanded opportunities for access to return information increase the risks of unauthorized disclosure. We believe this problem is technically solvable, but any solution requires management awareness and commitment to ensuring that proper controls are in place and procedures are followed.

GUIDELINES FOR COMPUTER MATCHING

The process of disclosing and comparing large files of automated information, such as tax data and entitlement program recipient rolls, and following up on the results of the comparison generally falls under the heading of computer matching. As stated in testimony in December 1982, we believe that computer matching can be a very cost-effective tool for detecting error and fraud in entitlement programs and for identifying actions needed to strengthen program controls.[4] As a form of internal control, it can be a very effective deterrent to fraud and waste if it is common knowledge that it is being used. We continue to endorse its use with the understanding that the privacy and due process rights of individuals will be protected. In particular, we believe it is essential that the results of computer matching ("hits" from matching two or more data sets) be confirmed before any action is taken regarding an individual's eligibility.

The increasingly widespread use of computer matching by federal and state agencies has raised concerns about guidelines for conducting the matches. Many of these concerns center around the cost effectiveness of the matches and the adequacy of procedures to protect individual privacy and due process rights when following up on matching "hits." The Office of Management and Budget (OMB) has published several documents that provide guidance for federal agencies' matching efforts. Only limited federal guidance is available to states administering federal programs. We have not assessed any of these guidelines in detail but have some limited observations about them. We also have several observations that may be useful to others based on our experience with computer matching.

OMB's matching guidelines are intended to help agencies relate the procedural requirements of the Privacy Act of 1974 to the operational requirements of computer matching. Federal agencies are required to follow these guidelines. We believe that the OMB guidelines are important because compliance with them would help assure uniform adherence to key provisions of the Privacy Act. The guidelines can be improved in several ways, however, including

--extending their coverage to computer matches that are aimed at verifying eligibility of persons before payments are made (so-called up-front matching),

--placing more emphasis on the follow-up of hits, and

--placing more emphasis on determining the appropriateness of doing matches to help avoid unproductive matches.

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[4] Statement before the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, on Computer Matching to Detect Error, Waste, and Fraud in Government Programs, December 16, 1982.

The second document OMB has issued is an "Agency Computer Match Checklist," which federal agencies are required to complete for each computer match. The checklist is intended to help agencies comply with OMB's computer matching guidelines and must be kept on file for review by OMB, GAO, and others.

OMB has also issued a "Model Control System and Resource Document" for computer matching. This document is intended to help federal agencies develop and maintain adequate internal controls over the approval and conduct of computer matching activities. Although OMB does not require that agencies use the model system, agencies must justify not using it. We have not analyzed this system, but did note that the procedures for following up on hits resulting from computer matching do not appear to involve the individuals suspected of receiving erroneous payments. We believe this is an important aspect of computer matching.

The only federal computer matching guidelines for the states of which we are aware were published in November 1983 by the Inspector General of the Department of Health and Human Services (HHS). The purpose of these guidelines is to provide state managers of federal programs with some practical guidance on how to approach cost-effective computer matching. As stated in the introduction to the document:

> "It focuses on the three major benefit programs administered by state government - AFDC, Food Stamps and Medicaid. It reflects a strong conviction that computer matching can contribute to the efficiency and effectiveness of these programs. At the same time, however, it recognizes the dangers associated with the indiscriminate use of computer matching."

Contrasted with the OMB model control system, the HHS guidelines are more conceptual than technical because, as HHS stated, they are intended to serve as a decisionmaking framework, rather than a how-to manual.

We believe that the HHS guidelines are a significant step toward assuring that computer matches are done consistently across states. Consistency is important because recent inventories by HHS and the Department of Labor showed that during the 1982-83 time frame, states conducted about 1,300 computer matches (each match generally involves many individuals). Sixty-five percent of these matches involved the AFDC and Food Stamp programs.

We have not developed official computer matching guidelines of our own. Over the past several years, however, we developed our own matching software and have gained extensive computer matching experience involving a variety of agencies and programs. Based on this experience, several observations are offered for consideration by others in achieving their computer matching objectives while giving consideration to the due process and privacy rights of individuals.

The term computer matching hits refers to those instances where the computer has determined, according to some predefined criteria, that a similarity or difference exists in selected data within a file or between two or more files. Hits may be of varying quality in that the selected data are not determined to be an exact match. Therefore, adequate procedures to refine or confirm the hits are essential.

To recognize this aspect of non-exact matches, our matching software has the capability to indicate the quality of a match or hit. One advantage of this is that the universe of matches can be divided into working subsets. This flexibility facilitates the follow-up on matching. For example, high quality hits generally require less verification effort than low quality hits. This method also helps prioritize matches for review.

We believe that it is essential to utilize all sources of data and expertise available to refine or confirm hits. The refinement process requires a combination of judgment, experience, and research built upon a detailed knowledge of the legal and regulatory requirements of the programs being matched. Such a process helps assure that only hits with high potential for erroneous payments are referred to program managers for further investigation and corrective action. We believe that referral of only refined quality hits to program managers builds credibility in the computer matching process. More importantly,it improves the chances that the investigations will identify and eliminate erroneous payments and lead to the collection of overpayments.

When planning to conduct a computer matching project, one of the most difficult questions to answer is whether or not the effort will be worthwhile. While our experience has shown that the benefits generally far outweigh the cost of a match, it is difficult to predict the likely outcome of any given computer matching project.

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SUSAN M. COLLINS, STAFF DIRECTOR

April 30, 1984

Ms. Martha McSteen
Acting Commissioner
Social Security Administration
Room 900, Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Ms. McSteen:

On June 6, the Senate Subcommittee on Oversight of Government Management will hold a hearing on the transfer of tax information to federal and state government agencies. Specifically, the hearing will focus on the transfer of tax information by the Internal Revenue Service (IRS) and the Social Security Administration (SSA) to other federal and state government agencies to verify eligibility for benefits and the collection of data by the IRS from private sources to identify cases of non-filing or underreporting of income by taxpayers.

To assist the Subcommittee in its examination of these issues, I ask that the appropriate official of the SSA provide me with the following information:

(1) a description of existing and planned programs involving the transfer of wage data by the SSA to federal or state government agencies for purposes of verifying eligibility for benefits in federally funded programs. In each instance, please provide the authority for such transfers;

(2) the procedures used by the SSA to ensure the confidentiality and proper use of wage data transferred by the SSA to federal and state government agencies, such as any agreements entered into by the SSA and state or federal agencies governing the use of the data;

(3) the methods used by the SSA to monitor the use of wage data tranferred to federal and state government agencies for eligibility verification purposes;

(4) the SSA's views on any statutory or administrative guidelines that should be adopted to govern the transfer of wage data from the SSA to other government agencies;

(5) a description of any project in which the SSA has sought to obtain unearned income data from the IRS in order to verify the eligibility of recipients to receive benefits under SSA programs;

(6) the procedures used by the SSA in conducting computer matches of unearned income received from the IRS for eligibility verification purposes; and

(7) the SSA's views on any statutory or administrative guidelines that should be adopted to govern the transfer of IRS data to other government agencies.

I request that you provide me with this information no later than Friday, May 18. Please have your response delivered to the Subcommittee on Oversight of Government Management, Room 326 of the Dirksen Senate Office Building.

I appreciate your assistance to the Subcommittee in its examination of these issues. If you have any questions, please have your staff contact Mary Gerwin of the Subcommittee staff at 224-5538.

With best wishes, I am

Sincerely,

Bill Cohen

William S. Cohen
Chairman

WSC:mbg

THE COMMISSIONER OF SOCIAL SECURITY
BALTIMORE, MARYLAND 21235

JUN 22 1984

1984

SRP-1

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

This is in response to your request for information regarding the transfer of tax information to Federal and State government agencies. Our responses to your questions are enclosed. I appreciate the opportunity to provide this information; please let me know if you have further questions.

Sincerely,

Martha A. McSteen

Martha A. McSteen

Enclosures

(1) Description and Authority for Programs Involving Transfer of Wage Data by SSA to Federal or State Government Agencies for Purposes of Verifying Eligibility for Benefits in Federally Funded Programs

A. Disclosure of tax return information, upon request, to State welfare agencies under section 411 of the Social Security Act for determining an individual's eligibility for and amount of aid or services under State plans for aid to families with dependent children.

B. Disclosure of tax return information, upon request, to officers and employees of the Department of Agriculture and State food stamp agencies for purposes of, and to the extent necessary in, (a) determining an individual's eligibility for benefits, or (b) the amount of benefits, under the food stamp program (26 U.S.C. 6103 (ℓ)(7)).

C. Disclosure of tax return information, upon written request, to State or local child support enforcement agencies for purposes of, and to the extent necessary in, (a) establishing and collecting child support obligations from individuals who owe such obligations, and (b) locating those individuals, under a program established under title IV-D of the Social Security Act (26 U.S.C. 6103(ℓ)(8)).

D. Disclosure to the Office of Personnel Management, upon request, for use in ensuring the accuracy of information used in administering the civil service retirement program (5 U.S.C. 8347(m)). (The procedures for this disclosure have not been worked out and the transfer of data has not begun.)

(2) Procedures Used by SSA to Ensure Confidentiality and Proper Use of Wage Data Transferred to Federal and State Government Agencies

(3) Methods Used to Monitor the Use of Wage Data Transferred to Federal and State Government Agencies for Eligibility Verification Purposes

The use and disclosure of tax return information is governed by provisions of the Internal Revenue Code (IRC) unless the information is disclosed under another Federal statute (e.g., 42 U.S.C. 611). Therefore, the Internal Revenue Service (IRS) generally has responsibility for setting policy concerning the use and disclosure of that information and monitoring other agencies who hold that information. SSA is authorized to hold and use return information for its administration of the Social Security Act under section 6103(ℓ)(1) of the IRC (26 U.S.C. 6103). SSA's disclosure regulation (20 CFR 401.210) emphasizes that the use and disclosure of return information are subject to different rules than other information in SSA's possession.

SSA is authorized under the IRC to disclose wage data for purposes of determining or confirming food stamp eligibility under 6103 (ℓ)(7) of the IRC (26 U.S.C. 6103(ℓ)(7)). SSA has entered into exchange agreements for the disclosure of wage data for matching purposes primarily with those States that do not have wage information from their own sources. The agreements require that the State protect information provided in accordance with section 1106 of the Social Security Act (42 U.S.C. 1306) and section 6103(p)(4) of the IRC (26 U.S.C. 6103(p)(4)). The agreements refer the recipient States to the safeguard requirements described in a brochure entitled "Tax Information Security Guidelines" in which Treasury has described the provisions of sections 6103 and 7213 of the IRC. The agreements also require the States to submit to IRS audits and furnish required reports to IRS. These agreements also provide that SSA may make onsite inspections to ensure that adequate safeguards are being maintained.

Under provisions of 6103(ℓ)(6) of the IRC (26 U.S.C. 6103(ℓ)(6), SSA may release wage data to Federal, state and local child support enforcement agencies. Wage information for this purpose is disclosed to the Parent Locator Service in the Office of Child Support Enforcement. Exchange agreements are not required for this disclosure of wage data because it is a disclosure within the Department of Health and Human Services. The redisclosure and safeguard provisions of the IRC do apply, however, because this is a disclosure authorized under provisions of the IRC.

SSA enters into data exchange agreements with States for the receipt of earnings information provided under section 411 of the Social Security Act (42 U.S.C. 611) for determining an individual's eligibility for and the amount of aid or services under State plans for aid to families with dependent children (AFDC). These agreements set forth the criteria, as established by the Secretary of HHS, for use of the information and restrictions on its redisclosure. The agreements also require that the States comply with secure storage requirements against unauthorized access, and advise all personnel of the confidential nature of the information, the safeguards required and the criminal and civil sanctions for noncompliance applicable in Federal statutes (e.g., section 1106(a) of the Social Security Act, 5 U.S.C. 552a(i)(3), and section 7217 of the IRC). The States must also agree to onsite inspections.

HHS regulations (20 CFR 401.601 et seq.) include a number of required measures to protect the confidentiality of wage data provided to State AFDC agencies such as: restricting access to and use of the information to AFDC workers and purposes; storing and processing the information in a manner that is secure from access by unauthorized persons; and advising personnel of the civil and criminal penalties for improper use or disclosure of the information. In addition, the operating guidelines that are released to the State agencies include specific suggested physical safeguards for the protection of confidential information such as: ensuring that all entrances are locked at close of business; clearly identifying restricted access areas; storing confidential records in locked cabinets; and making material containing personal data or instructional data illegible before being discarded.

With regard to monitoring the use of wage data, SSA is aware of problems with the current procedures (which were also identified by GAO and IRS), and is in the process of establishing guidelines and instructions to supplement the basic data exchange agreements. Oversight responsibilities for assuring State and local compliance and the conduct of onsite reviews will rest with SSA regional offices. Monitoring procedures will include a self-evaluation process backed up by an oversight program, including onsite reviews.

(4) SSA's Views on Statutory or Administrative Guidelines to Govern SSA Transfer of Wage Data From SSA to Other Government Agencies

We believe, based on our experience, that the various statutory and administrative guidelines contained in the Internal Revenue Code, Treasury regulations and the Social Security Act and regulations are sufficient to ensure the confidentiality and proper use of wage data transferred by SSA to other government agencies.

(5) Project to Obtain Unearned Income Information from IRS to Verify Eligibility of Recipients to Receive Benefits Under SSI Program

In May 1982, the Social Security Administration (SSA) notified Supplemental Security Income (SSI) recipients that they were required, as a condition of continued SSI eligibility, to authorize the Internal Revenue Service (IRS) to furnish SSA information filed by financial institutions. SSA sought this authority because it would allow establishment of an efficient, computer-match procedure for verifying the ownership of bank accounts and the receipt of interest by SSI recipients. Two separate reports by the General Accounting Office recommended that SSA verify SSI eligibility using IRS information.

Most SSI recipients signed authorizations and returned them to SSA, but the interface was not implemented. Two court cases (Tierney et. al. v. Schweiker and Trahan v. Regan) challenged SSA's procedures and the authority of IRS to release information to SSA. In September 1983, the United States Court of Appeals for the District of Columbia Circuit ruled that IRS cannot release tax information to SSA based on the consent forms sent out in 1982. The court held that the forms did not obtain knowing and voluntary consent, as required by the Internal Revenue Code, and did not meet requirements of IRS regulations. IRS never released any information to SSA on the basis of those forms.

Provisions in H.R. 5394, now pending in the Senate, and H.R. 4170, as passed by the Senate and awaiting completion of conference committee action, would allow SSA to establish the SSI/IRS interface.

(6) Procedures Used by SSA in Conducting Computer Matches of Unearned Income Received From IRS for Eligibility Verification Purposes

An interface to match Social Security Administration (SSA) and Internal Revenue Service (IRS) records to verify Supplemental Security Income (SSI) eligibility was planned but not implemented because of the 1983 court ruling in Trahan v. Regan. SSA had intended to treat information received from the interface as leads indicating the need for additional investigation. Depending on what information was turned up by subsequent investigation, as appropriate, SSA would have reconfirmed eligibility and benefit amounts, or adjusted individuals' benefits, terminated individuals' eligibility, found overpayments of SSI benefits and begun efforts toward recovery, examined indications of fraud, etc. All of these actions would have been subject to normal due process procedures.

Enactment of the income verification provision in H.R. 4170, as agreed upon by the conference committee would allow SSA to implement the SSI/IRS interface. Under this provision, SSA would not need individuals' authorizations to obtain IRS information on unearned income. However, SSA would advise SSI applicants and recipients that IRS information would be requested and used to verify their allegations regarding ownership of bank accounts. Information received from IRS would be used solely for the purpose of verifying eligibility for, and the correct amount of, benefits and would be safeguarded to protect individuals' privacy. The IRS information alone would not be the basis for any action to reduce, deny, suspend, or terminate individuals' benefits, since the IRS information would not reveal circumstances that may make the information irrelevant for SSI purposes. For example, IRS records would not reveal that an individual is holding in his account funds that he cannot use because they belong to another person, and the records would not show that an account may be an excludable burial fund. To determine what action should follow from the information revealed by the IRS interface, SSA would seek clarification from the individual to verify the amount of the resource or income involved and whether the individual actually has or had access to it. If after investigation with the claimant SSA determines that benefit reduction or termination is necessary, these actions would be done according to due process procedures, giving the claimant still another opportunity to rebut the information if he disagrees with the action.

(7) SSA's Views on Statutory or Administrative Guidelines to be Adopted to Govern Transfer of IRS Data to Government Agencies

The Tax Reform Act of 1976 introduced a number of changes in the overall handling of wage data. SSA and IRS have engaged in discussions of a number of these changes and will continue to try to work for the proper handling of wage data for the most efficient administration of federally funded programs. SSA's principal concern involves interpreting the law to allow the use of earnings data by various government agencies for research and statistical purposes while continuing to protect the confidentiality of the data.

STATEMENT OF

JOHN SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION

on

COMPUTER MATCHING

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

December 15, 1982

Introduction

I am pleased to appear before the Subcommittee on behalf of the American Civil Liberties Union to discuss the use by government agencies of a rapidly growing new investigative technique: the matching of unrelated computerized files of individuals in order to identify suspected law violators. This technique--"computer-matching"--provides a revoluntionary method of conducting investigations of fraud, abuse and waste of government funds because it permits the government to screen the records of whole categories of people, such as federal employees, to determine who among them also falls into separate, supposedly incompatible categories, such as welfare recipients.

Computer-matching raises profound issues concerning individual privacy, due process of law and the presumption of innocence. It also poses serious questions about cost-effectiveness and the internal management and audit of government programs.

The ACLU is a nationwide, non-partisan organization of more than 250,000 members dedicated to preserving and enhancing rights guaranteed by the Constitution. We bring substantial experience and commitment to issues of individual privacy, having been at the forefront of efforts in the Congress over the last decade to enact privacy legislation, notably the Privacy Act of 1974, the Tax Reform Act of 1976, the Right to Financial Privacy Act of 1978, and the Privacy Protection Act of 1980. My own experience in this area is based on five years of service as counsel to the ACLU's Privacy Project and five years as national legislative director of the organization, as well as the authorship of a college textbook, Rights of Privacy (National Textbook Company, 1978) and a variety of studies and articles on information privacy issues.

In my testimony I will review the major constitutional and legal principles which I believe are being undermined by the increasing and largely unregulated conduct of computer-matching investigations. I will then comment on the two sets of federal guidelines promulgated in 1979 and 1982 by the Office of Management and Budget concerning computerized matching programs, neither of which in my view reflects any serious consideration of privacy principles nor contains adequate protections and safeguards against abuse. I will review several specific examples of recently conducted computer matches that pose threats to individual rights, and I will summarize information on the public record about the cost-effectiveness of some of these programs. Finally, I will set forth several alternatives to computer-matching for curtailing fraud and waste in the administration of government programs, and I will recommend several legislative and regulatory measures to control and limit the use of computer-matching in the interests of safeguarding individual rights.

Effects of Computer-Matching on Individual Rights

To understand the impact of computer-matching on individual rights, it is first necessary to grasp the profound difference between a computer-match investigation and a traditional law enforcement investigation.

A traditional investigation is triggered by some evidence that the target has engaged in wrongdoing. This is equally true for cases of tax evasion, welfare fraud, bank robbery or traffic speeding, and it is true both because the limited resources of law enforcement usually make it impracticable to conduct dragnet investigations and, more importantly, because our constitutional system generally bars the government from investigating persons it does not suspect of wrongdoing.

A computer-match is not bound by these limitations. It is directed not at an individual, but at an entire category of persons, not because any one of them is suspected of misconduct, but because the category is of interest to the government. What makes computer-matching so fundamentally different from a traditional investigation is that its very purpose is to generate the evidence of wrongdoing that is required before an investigation can be initiated. That evidence is produced by "matching" two sets of personal records compiled by the government for wholly unrelated purposes.

There are at least four ways in which a computer-match differs from a conventional law enforcement investigation in terms of its impact on individual rights:

1. Fourth Amendment

The Fourth Amendment to the Constitution protects against unreasonable searches and seizures, the most blatant of which historically have been "fishing expeditions" directed against large numbers of people on the chance that "something will turn up." From the "writs of assistance" that were used in the 18th century by royal revenue agents to search door-to-door for violations of the British tariff laws in the American Colonies[1] to the municipal code inspections used in the 20th century to enforce health and safety standards,[2] the principle that generalized fishing expeditions violate the right to be free from unreasonable searches and seizures has held firm in American law.

That principle is violated by computer-matching. The technique of matching unrelated computer tapes is intentionally designed as a general search and is not based on any pre-existing evidence to direct suspicion of wrongdoing to any particular member of the category of people whose records are to be matched. While it is true that systematic searches of personal records are not as intrusive as door-to-door searches of houses or places of business, the result is the same: a massive dragnet into the private affairs of huge numbers of people.

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[1] Lasson, *The History and Development of the Fourth Amendment* (Baltimore, Johns Hopkins Univ. Press 1937), p. 55.

[2] *Marshall* v. *Barlow's Inc.* _____ U.S. _____ (19); Camara v. Municipal Court, 387 U.S. 523 (1967).

2. Presumption of Innocence

That brings me to a second principle of individual rights that is squarely at odds with computer-matching. Generally speaking, people in our society are not forced to bear a continuous burden of demonstrating to the government that they are innocent of wrongdoing. While citizens are obliged to obey the law--and violate it at their peril--presumption of innocence is intended to protect people against having to prove that they are free from guilt whenever the government chooses to investigate them.

There are many examples of how computer-matching can turn the presumption of innocence into a presumption of guilt. Later in my testimony I will cite examples of Massachusetts welfare recipients who have been summarily removed from the state welfare rolls as the result of a computer-match, and who are now fighting for reinstatement based on information the state neglected to take into account after their names appeared as "hits" in the match. A similarly striking example of this "presumption of guilt" occurred two years ago in Florida, when the state's attorney for a three-county area around Jacksonville obtained the case files for all food-stamp recipients in the area and then launched fraud investigations against those who had received allotments of more than $125 a month. A federal court of appeals invalidated the file search and enjoined the investigation on the ground that the targeted food stamp recipients were put in the position of having to prove that the allotment they had received was not based on fraud. Construing the Food Stamp Act, the Court held that "it did not allow the [state food stamp] agency to turn over files. . . for criminal investigation at any time without regard to whether a particular household has engaged in questionable behavior."[3/]

Once a computer-match has taken place, any person whose name appears as a "raw hit" by virtue of turning up on two unrelated computer tapes is presumed to be guilty of the wrongdoing under investigation--in part because the technology of computer-matching is so compelling and in part because its purpose--the detection of fraud and waste--is so commendable. The worst abuses of computer-matching, such as the summary termination of welfare benefits, have occurred when the government authorities conducting a match have casually transformed this "presumption" into a conclusive proof of guilt, based on no other evidence than a computer "hit".

3. Privacy Act

The most important principle governing the collection and use of personal information by the government is that the individual has a right to control information about himself and to prevent its use without his consent for purposes wholly unrelated to those for which it was collected. This principle is imperfectly embodied in the Privacy Act of 1974, 5 U.S.C. Section 552a, among whose flaws is that it has proved difficult to enforce.

[3/] Roberts v. Austin, 632 F.2d 1202, 1211 (5th Cir. 1980), cert. denied, 50 L.W. 3338 (1981) [emphasis supplied].

The Privacy Act restricts disclosure by federal agencies of personally identifiable information, such as the kind of information used in computer matches, unless the subject consents. There are two major exceptions to this rule. The first involves a "routine use," defined as "the use of [a] record for a purpose which is compatible with the purpose for which it was collected."[4] The second involves a "law enforcement" disclosure, which enables an agency to be responsive to a request by another agency for information relevant to the investigation of a specific violation of law.[5]

When computer matching was in its infancy at the federal level, the Privacy Act was correctly perceived by several federal agencies to be a major stumbling block for the new investigative procedure. The Civil Service Commission initially balked in 1977 at the plans of HEW Secretary Joseph Califano to institute a match of federal employee records and state welfare rolls, on the ground that the use of employee records for such a purpose would violate the Privacy Act. In a July 27, 1977 letter to HEW Inspector General Charles Ruff, the Commission's General Counsel, Carl F. Goodman, stated pointedly that the proposed match could not be considered a "routine use" of employee records, since the Commission's "information on employees was not collected with a view toward detecting welfare abuses." Similarly, it could not be considered a "law enforcement" use, since "at the 'matching' stage there is no indication whatsoever that a violation or potential violation of law has occurred."[6/]

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[4] 5 U.S.C. Section 552a(a)(7).

[5] 5 U.S.C. Section 552a(b)(7).

This candid and reasonable interpretation of the Privacy Act soon gave way to a succession of strained readings seeking to square computer-matching with the Act's prohibition on uses of personal records except for purposes compatible with the purposes for which they were collected.[7/] Since enforcement of the Privacy Act is left almost entirely to the agencies it regulates it is hardly surprising that the agencies have bent the Act to their own purposes and have now miraculously established that computer-matching is a "routine use" of personal records. All that is required to satisfy the policy of the Act, they say, is to publish each new computer matching "routine use" in the Federal Register

The Privacy Act has now been so thoroughly circumvented by executive action that it can no longer be seen as an effective safeguard against computer-matching abuses. Nevertheless, the principle underlying the Act that individuals should be able to exercise control over information about themselves which they provide to the government is a bedrock principle of individual privacy. That principle is at war with the practice of computer-matching.

6/ Letter to Carl F. Goodman, General Counsel, U.S. Civil Service Commission, to Charles Ruff, Acting Deputy Inspector General, HEW July 27, 1977, p.2, attached as Appendix A.

7/ For a contemporaneous comment on this development, see Letter of John Shattuck to the Hon. Joseph A. Califano, Jr., December 8, 1977, attached as Appendix B.

4. Due Process of Law

Once a computer match has taken place it will result in a series of "hits," defined in the 1982 OMB guidelines as "the identification, through a matching program, of. . . specific individual(s)."[8] At this point all those identified are in jeopardy of being found to be guilty of wrongdoing. To the extent that they are not given notice of their situation and an adequate opportunity to contest the results of the match, they are denied due process of law.[9]

This is precisely what has happened in several of the best known matching programs conducted to date. For example, the results of Secretary Califano's Operation Match were kept secret from the federal employees whose records were matched with welfare rolls, because the Justice Department viewed the investigation "as a law enforcement program designed to detect suspected violations of various criminal statutes." Apparently for this reason the Justice Department ordered the Civil Service Commission not to notify any of the federal employees whose names showed up as "hits," since "[t]he premature discussion of a specific criminal matter with a tentative defendant is in our view inimical to the building of a solid prosecutorial case."[10] In Massachusetts the welfare authorities have gone one step further by terminating benefits of persons showing up as "hits" without even conducting an internal investigation of the validity and accuracy of the computer match results.

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[8] 47 Federal Register, 21657 (may 19, 1982), § 4(f).

[9] See, e.g., Goldberg v. Kelly, 397 U.S. 254 (1970).

[10] Letter from Asst. Attorney General Benjamin R. Civiletti to Civil Service Commission Executive Director Raymond Jacobson, October 7. 1977.

This approach makes a mockery of both the legal and practical bases for due process of law. Due process is as old as Anglo-American jurisprudence. It is the right to confront one's accuser and introduce evidence to show that he is wrong. When the accuser is a computer tape containing information compiled from government records, the possibility of error is substantial. The practical as well as legal effect of keeping the subject of a "raw hit" in the dark about the results of a computer match is greatly to increase the likelihood that that an error will go undetected until it is too late to remedy without substantial cost to the individual as well as the government.

A travesty of due process can result from an agency's exclusive reliance on a computer match in determining whether to take action against the subject of a "hit". Following are several examples of erroneous welfare termination orders by the Massachusetts Department of Public Welfare, based upon a match of state welfare rolls with Massachusetts bank accounts. The examples are drawn from litigation challenging the match program currently pending in a Massachusetts federal court:[11]

> Recipient, a resident of a nursing home, held a certificate of deposit in trust for a local funeral director, to be used for her funeral expenses. Her Medicaid was ordered

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[11] Lessard v. Spirito, Civil Action No. _____ (D.Mass. filed Nov. 5, 1982).

> terminated [when the computer match indicated that her bank account was above the Medicaid assets limit]. This decision is clearly wrong, because under federal regulations a burial contract account is an exempt resource.
>
> [The computer match showed recipient] to be $276 over the AFDC asset limit and her account was ordered terminated. Most of the money belonged to her brother who was in the army. She had previously disclosed this account to her social worker, who had told her not to worry about it.
>
> The recipient had a joint account with her 17 year old son, consisting of his money which he had received from his father and had earned. After the match [and after her benefits had been ordered terminated] the son withdrew a substantial amount of money (putting the account below the asset limit) in order to pay a debt to his grandfather. [12]

OMB Guidelines

Computer matching at the federal level has been regulated since 1979 by guidelines issued by the Office of Management and Budget. These guidelines, which were revised by the Reagan Administration in May 1982, are intended primarily to "help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching."[13] In translation this means they are an effort to paper over the profound conflict between (1) the Privacy Act principle that personal records are to be used by federal agencies only for purposes compatible with those for which they were compiled and (2) the computer matching practice of joining personal record systems which have been compiled for wholly unrelated purposes.

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[12] Affidavit of Allan G. Rodgers, Lessard v. Spirito, supra, at pp. 8-11, attached as Exhibit C.

[13] OMB Matching Guidelines, 47 Federal Register 21656 (May 19, 1982), §1.

To see how difficult and self-defeating the guideline-drafting task has been for OMB, it is necessary only to review the regulations issued by that office in 1975 when the Privacy Act was implemented. In these regulations OMB made very clear to federal agencies the major purpose of the Privacy Act: "One of the primary objectives of the Act is to restrict the use of information to the purposes for which it was collected."[14/] The parameters of this restriction are correctly described as "routine uses. . . that are appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public," such as agency "housekeeping measures."[15/] To make it plain that this was by no means an unlimited category, the regulations explicitly stated that "a 'routine use' must be not only compatible with, but related to the purpose for which the record is maintained."[16/] Finally, to nail the point down, OMB in 1975 pointed out that the statutory requirement that an agency give public notice of its routine uses of personal records was intended "to deter promiscuous use of this concept."[17/]

There is no way to reconcile OMB's interpretation of the Privacy Act with its guidelines on computer-matching. The 1979 guidelines represent an effort to work within the procedural

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[14/] 40 Federal Register, 28953 (July 9, 1975) [emphasis supplied].

[15/] Id.

[16/] Id.

[17/] Id.

framework of the Privacy Act while circumventing its substantive requirements. The clearest example of this is the provision in the guidelines setting forth the steps that agencies must follow when planning computer matches of personal record systems which are, by definition, unrelated. The most important step is to publish a notice in the Federal Register defining the proposed match as a "routine use" of the records to be compared. Calling for the impossible, the guidelines make it even more difficult by requiring that "the notice should explain the justification of the routine use, including how the disclosure is compatible with the purpose for which the information [to be matched] was collected."[18] There is no way this requirement can be satisfied, since the matching of unrelated records will necessarily be unrelated to the purposes for which they were collected.

With this background, it is not difficult to see how OMB's matching guidelines have rendered meaningless the central principle of the Privacy Act. One example is enough to make the point. In 1980 the Office of Personnel Management published a notice in the Federal Register concerning its proposed use of personnel records for a matching program to help the Veterans' Administration verify the credentials of its hospital employees. The notice dutifully stated that the proposed match of OPM and VA records was a "routine use," which it explained as follows:

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[18] 44 Federal Register, 23141 (April 18, 1979), § 5(c)(3)(a) [Emphasis added].

> "An integral part of the reason that these records are maintained is to protect the legitimate interests of the government and, therefore, such a disclosure is compatible with the purposes for maintaining these records." 19/

Under that broad justification any disclosure or matching of personal records would be permissible, since all federal records are purportedly maintained for the "legitimate interests of the government." If this is so, there is little basis for any claim that the OMB guidelines effectively, or even minimally, regulate the practice of computer matching.

Apart from this tortured effort to rationalize computer matching with the Privacy Act, the OMB guidelines do provide some restrictions on matching programs. These include requirements that only the minimum information necessary for a match should be disclosed, that there should be written interagency agreements on data use, that there should be controls on disposition and return of records, and that notices should be sent to OMB and to Congress concerning the creation of new systems of records as a result of any computer match. 20/

But this minimal list of protections is overshadowed by the fact that the guidelines contain no requirements or limitations on the conduct of computer matching in such critical areas as: (1) The nature of the record systems to be matched -- as far as one can discern there are no personal records, no matter how sensitive (e.g., medical files, security clearance records,

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19/ Quoted in Kirchner, "A History of Computer Matching in the Federal Government," Computerworld, December 14, 1981, p. 15.

20/ 47 Federal Register, 2156-2158 (May 19, 1982) §§ 5a(2), 5b, 5d and 5e(2).

intelligence records, etc.), that are beyond the reach of computer-matching for any investigative purpose; (2) the procedures to be followed in determining the validity of "hits"--although the 1982 guidelines require agencies to publish "the procedures to be used in matching and following up on "hits,"[21] no particular procedures are required to insure that the subjects of "hits" are afforded due process of law; (3) the standards and procedures to be followed for securing OMB approval of a proposed match--since the first set of guidelines was promulgated in 1979 OMB has not disapproved a single computer match, which is hardly surprising since it is not clear from the guidelines what role, if any, OMB is to play in reviewing the appropriateness of a proposed match; and (4) the projected costs and benefits of a proposed match, as well as the actual costs and benefits after it has been conducted--the 1982 guidelines have deleted all reference to cost-benefit analyses or reports on computer matches,[22] thus apparently leaving it entirely to an agency's discretion whether to undertake a proposed match or to report its results in terms of costs incurred in running the program and benefits achieved in the recoupment of funds for the Treasury.

For all these reasons it is impossible not to conclude that computer-matching at the federal level is a huge unregulated business, the only clear effect of which to date has been the undermining of individual privacy.

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[21] *Id.* § 5f(1)(b).

[22] The 1979 guidelines had minimal requirements in this area. See 44 *Federal Register* 23139 (April 16, 1979), § 5a.

Examples of Computer Matches

There is no published compilation of computer matches conducted at every level of government, but it was recently estimated that more than 200 have occurred in the six years since the technique was first used.[23] At the federal level there have been matches for a wide variety of investigative purposes, using a broad range of personal record systems of varying degrees of sensitivity. These include matches of federal employee records maintained by the Civil Service Commission with files of persons receiving federal Aid to Families with Dependent Children, to investigate "fraud";[24] federal personnel records maintained by the Office of Personnel Management with the files of Veterans Administration hospital employees, to check "accreditation";[25] federal personnel records of Agriculture Department employees in Illinois with Illinois state files on licensed real estate brokers to "ascertain potential conflicts of interest";[26] IRS records of taxpayer addresses with lists of individuals born in 1963 supplied by the Selective Service System, to locate suspected violators of the draft registration law;[27] and Labor Department files of persons entitled to receive Black Lung benefits with HHS records of Medicare billings, to investigate "double-billing medical fraud."[28] These matches are only a handful of the total conducted, and even with respect to these, very little hard data is available, thanks in large part of the extraordinarily weak oversight and reporting requirements of the OMB guidelines, and the lack of attention to this subject by the Congress prior to the hearings of this Subcommittee.

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[23] New York Times, December 13, 1982, p. A1.

[24] The Washington Post, July 1, 1979, p. E3.

[25] Computerworld, December 14, 1981, p. 15.

[26] Privacy Times, June 9, 1982, p. 7.

I would like to review for the Subcommittee what little information is available on the public record about the conduct and results of several computer matches that have been conducted in recent years.

1. Project Match

Project Match was launched by HEW Secretary Joseph Califano in November 1977. It was aimed at comparing HEW employment records with welfare rolls in the Washington, D.C. area, and it was intended to be a pilot project for the eventual nationwide match of five million federal employee records with welfare lists in twenty-six states. In September 1978 Secretary Califano announced the names of fifteen current or past agency employees who had been indicted on charges of welfare fraud based on the results of the match. None had been contacted when their names showed up as "hits", although their names were released to the press when Califano made his announcement of the final results of the match.

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[27] Los Angeles Times, July 12, 1982, p. 1.

[28] The Washington Post, February 18, 1982, p. A21.

The progress of the HEW trials was followed by the press. The following account by Evan Hendricks, editor of a respected Washington newsletter on privacy issues, was published in the Washington Post:

> Of the 15 HEW workers who were indicted--all of them welfare mothers--five had their cases dismissed, four had the charges reduced to misdemeanors, and the remaining six pled guilty to to felonies. None of those who had pled guilty had to serve prison time, and federal judges, unimpressed with the government's "best cases", ordered repayment of less than $2,000 29/

The overall data on the pilot project is similarly unimpressive. According to an October 26, 1978 status report, "the matching program resulted in 638 'raw' hits. The HEW Audit Agency determined that of these 'raw' hits, 480 were not worthy of further investigation because employment period or SSI payment period were not the same or because the file of SSI recipients contained those who had applied for SSI but who had not actually received payments. Of the original 'raw' hits, 158 cases were forwarded to the SSA Integrity Staff for further study. . . . Of the 158 cases referred, 41 are still under investigation for fraud and 55 fraud investigations have been closed with no further action to be taken. Also, 15 cases are still being investigated in the non-fraud area, while 45 have been closed." 30/

29/ The Washington Post, July 1, 1979, p. E3.

30/ Status Report on HEW Employment/SSI Recipient Project as of October 26, 1978, attached as Exhibit D.

Finally, to underscore the point that fraud did not appear to be the major problem in the administration of HEW public assistance programs, the same HEW office that conducted Project Match estimated that only 21% of the reported losses in the Aid for Dependent Children Program in 1977 were attributable to fraud.[31/]

2. Selective Service System-IRS

A very different but equally disturbing set of problems is posed by the matching of IRS taxpayer files with Selective Service lists of suspected non-draft registrants. Under this program IRS is using its computers to match addresses in IRS files with the names of 250,000 individuals supplied by the Selective Service System, all of whom will eventually receive notices in IRS envelopes that they face possible prosecution if they fail to register and that their addresses may soon be provided by IRS to Selective Service.

The issues raised by this match illustrate the danger of using the records of a particularly sensitive and unique agency, such as IRS, in any matching program, especially one with such a clear prosecutive purpose. First, the match involves IRS in a matter wholly unrelated to the enforcement of the tax laws, which depend in large measure on the willingness of taxpayers to provide large amounts of sensitive information about themselves. Second, the match raises the specter that the tax returns of those receiving the IRS letter will receive "special attention" because of

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31/ The Washington Post, July 1, 1979, p. E3.

their suspected status as non-registrants. Third, the match seriously erodes taxpayers' confidence in the privacy of their tax records and the independence of IRS. All of these related dangers could have a devastating impact on the effectiveness of IRS as well as the rights of taxpayers.

If the IRS-Selective Service match is found to be an acceptable use of the computer-matching technique, there will be many agencies lining up outside the doors of IRS with similarly "compelling" proposals. As Representative Benjamin Rosenthal (D-NY), chairman of the House Subcommittee on Commerce, Consumer and Monetary Affairs, put it last summer in a letter to IRS Commissioner Roscoe Egger: "As you undoubtedly know, since the involvement of IRS in Watergate, the Service has resisted attempts by other Executive agencies to use it as a law enforcement agency for non-tax purposes. If IRS is to be used to secure compliance with the draft registration law, why should it not be used for compliance with the myriad other laws enforced by the Executive branch?"[32/]

3. State Welfare Matches: Massachusetts and New York

At the state level computer match investigations of welfare fraud are also being conducted. Two large operations are underway in Massachusetts and New York. I will set out some recent developments in Massachusetts, and my colleague, Norma Rollins, will summarize the results of a report prepared by her Project on the costs and benefits of the New York program.[33/]

[32/] Letter of Rep. Benjamin Rosenthal (D-NY) to Hon. Roscoe Egger, Jr., Commissioner of Internal Revenue, July 21, 1982, p.2.

[33/] Attached as Exhibit E.

The Massachusetts welfare-bank records match began in August 1982. The State Department of Public Welfare submitted computer tapes bearing the Social Security numbers of all welfare recipients in the state to 117 Massachusetts banks having a total of seven million deposit accounts. By comparing the Social Security numbers with bank account records the banks were able to identify for the state all welfare recipients who had cash assets beyond the allowable limit for persons on welfare. Upon receiving these lists of "hits" from the banks, the Department of Public Welfare did nothing further to check the accuracy of the assets information or to determine its relevance to the eligibility of particular recipients. Instead, it immediately sent out benefit termination notices to all those whose names appeared as hits.[34/]

The problems associated with this type of match are manifold. First, the use of bank account information raises many of the same far-reaching questions of confidentiality that are raised by matches involving tax records. A person's bank account is a mirror of his or her private life. Information from the account was never intended to be available to government investigators for the asking, as emphasized in the federal Right to Financial Privacy Act of 1978, which generally bars access to bank records except pursuant to legal process.

34/ Plaintiffs' Memorandum in Support of their Motion for Temporary Restraining Order, pp. 2-3, Lessard v. Spirito, supra.

Second, the sending of termination notices to all welfare recipients showing up as "hits" on the welfare-bank match constitutes a denial of due process of law and a costly and inefficient method of managing the welfare system. As the pending litigation challenging the summary termination notices shows, there are many ways in which the "presumption of guilt" created by a "hit" on the match could be erroneous: the assets in an account may not be the property of the welfare recipient, the assets may be legally justifiable (e.g., to pay funeral expenses), the account may be held jointly by several people, etc.[35/] In any event, the error rate for welfare terminations based solely on the fact of computer match "hits" appears to be exceptionally high, as shown by the fact that appeals of termination notices sent as a result of the computer match are being filed at six times the normal appeal rate.[36/]

Third, and perhaps most important, the Massachusetts program demonstrates how utterly ineffective a computer match is in providing the kind of detailed, variable and verified information that is needed to reach a conclusive judgment about whether a person is eligible for welfare or has committed welfare fraud. For example, each welfare program exempts certain types of assets in determining eligibility. Beyond certain very basic items like the home in which the welfare recipients reside, the specifics

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[35/] Affidavit of Allan Rodgers, attached as Exhibit B.

[36/] Plaintiffs' Memorandum, Lessard v. Spirito, supra, p. 5.

of these exemptions vary greatly from program to program. Although the streamlining of eligibility requirements would certainly serve to improve the management of most welfare programs, the current complexity of these requirements renders both meaningless and dangerous the kind of simplistic "hit" information provided by the Massachusetts welfare-bank account match.

Recommendations and Conclusion

Computer-matching is an attractive investigative technique. It appears to permit law enforcement officials for the first time instantaneously to root out all instances of a particular kind of wrongdoing in a particular segment of the population. It constitutes a general surveillance system which supposedly can detect and deter misconduct wherever it is used. It appeals to the view that "if you haven't done anything wrong, you don't have anything to worry about."

But there are heavy costs associated with computer-matching, both in terms of individual rights and in terms of law enforcement expenditure, and it is not at all clear that the benefits of the technique outweigh the costs.

Upon close examination computer-matching has been hard pressed to line up to its advanced billing. The comparison of unrelated record systems is fraught with difficulty. Data on the computer tapes may be inaccurate, or inaccurately recorded. It may present an incomplete picture of the persons to whom it pertains. It is unlikely to be sufficient to "answer" difficult questions, such as whether a person is entitled to receive welfare or is engaged in a conflict of interest. On the other hand, computer-matching most certainly erodes a wide variety of individual rights, such as the Fourth Amendmnet right to be free from unreasonable search, the presumption of innocence, the right to due process of law and the right to limit the government's use of personal information to the purposes for which it was collected. Moreover, the rapid and unchecked growth of computer-matching leads inexorably to the creation of a *de facto* to National Data System in which personal data is widely and routinely shared at all levels of government and in the private sector.

The hearings of this Subcommittee are a welcome opportunity, long overdue, to look closely at computer-matching before it grows beyond control. As a general framework for the development of safeguards of individual rights, I propose the following:

1. The Privacy Act should be amended to clarify that computer matches arenot *ipso facto*, "routine uses" of personal record systems.
2. No further federal computer mathces should be permitted without express congressional authorization.

3. Congress should not authorize computer matches of sensitive personal records sytems, the confidentiality of which is otherwise protected by statute, such as taxpayer records maintained by the Internal Revenue Service, census records maintained by the Census Bureau, or bank records maintained by federally insured banking institutions.

4. No computer match should be authorized unless and until an analysis has been made of its projected costs and projected savings in the recoupment of funds owed to the government, and a determination has been made that the public benefit will far outweigh the cost and that individual rights will be protected. The results and full costs of any match that is undertaken should be published.

5. Procedural due process protections for the persons whose records are to be matched should be specified by statute, including the right to counsel, the right to a full hearing, and the right to confidentiality of the results of a match.

These are only tentative and preliminary recommendations. Needless to say, the entire thrust of my testimony has been to raise profound questions about the development of computer-matching. The thrust of my recommendations is the call for a moratorium on all further matching to give the Congress and the public an opportunity to study the results of all the computer-matching programs that have been conducted to date and the long-term consequences of further developing this technique. In the end, I must agree with Justice Douglas that "I am not ready to agree that America is so possessed with evil that we must level all constitutional barriers to give our civil authorities the tools to catch criminals."[32]

Thank you for the opportunity to appear before the Subcommittee.

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[32] California Bankers Association v. Shultz, ____ U.S. ____ (1973) (dissenting).

APPENDIX A

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
CC:LJC 1
LF:kab

YOUR REFERENCE

JUL 27 1977

Charles Ruff, Esq.
Acting Deputy Inspector General
Department of Health, Education and
Welfare
Room 5262, North Building
4th & Independence Avenue, S.W.
Washington, D. C. 20201

Dear Mr. Ruff:

As you know from meetings with staff of this office, we have expressed concern about the compatibility of "Project Match" with the restrictions placed on agencies by the Privacy Act of 1974 (5 U.S.C. § 552a). The project would furnish computer files of the Commission containing the name, date of birth, social security number, salary, and duty location to your office for comparison with State Welfare rolls to detect abuses in the Aid to Families of Dependent Children (AFDC) program.

The legislation creating your office (42 U.S.C. § 3521) provides, in pertinent part, that agencies shall furnish information when to do so would not contravene existing statutory restrictions or agency regulations and:

> "(3) In the event any record or other information requested by the Inspector General. . .is not considered to be available under the provisions of section 552a(b)(1), (3), or (7) of title 5, United States Code, such record or information shall be available to the Inspector General in the same manner and to the same extent it would be available to the Comptroller General."

The information to be furnished would be obtained from the Commission's Central Processing Data File (CPDF). Because the information therein is within the definition of "system of records" at 5 U.S.C. § 552a(a)(5), the restrictions imposed on disclosure by the Privacy Act without the written consent of the individuals to whom the information pertains, would be applicable.

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT

Although the quoted portion of the statute refers to availability under 5 U.S.C. § 552a(b)(1), (3), (7) and to the same extent the information would be available to the Comptroller General, we have some doubts that any of these provisions are clearly applicable to permit disclosure under the circumstances presented here.

At 5 U.S.C. § 552a(b)(1) disclosure is permitted where it would be "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." Since this would be an inter-agency rather than an intra-agency disclosure, (b)(1) is patently inapplicable.

Disclosure is permitted under (b)(3) for a "routine use" established by the agency. Among the routine uses established by the Commission for its "CSC/GOVT-3" system of records at 41 Fed. Reg. 42164 (Sept. 24, 1976) is the following:

> "p. Disclosed to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation."

The difficulty with disclosure under the routine use provision is two-fold. At subsection (a)(7) of the Act, "routine use" is defined as "the use of such record for a purpose which is compatible with the purpose for which it was collected". Although the literal terms of this provision obviously cannot be followed with precision in practical application to agency operations, it is evident that this information on employees was not collected with a view toward detecting welfare abuses. Secondly, and perhaps more significantly, at the "matching" stage there is no indication whatsoever that a violation or potential violation of law has occurred. It is only after a comparison of data between those currently on Federal payrolls and AFDC rolls produces a "match" that a possible or potential violation of law warranting further inquiry is evident. It cannot fairly be said, therefore, that disclosure of information about a particular individual at this preliminary stage is justified by any degree of probability that a violation or potential violation of law has occurred.

It has been suggested that (b)(7) would permit disclosure under these circumstances. That provision sanctions disclosure "to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought."

While this provision seemingly eschews the requirement of the routine use quoted above that there must be some indication of a violation or potential violation of law before disclosure is sanctioned, its emphasis on specificity suggests that it was not intended to permit broadly-worded, all inclusive requests either for all the records on a given individual or certain information on a large class of persons. Indeed, the Office of Management and Budget in its guidelines interpreting the Act warns, "(b)lanket requests for all records pertaining to an individual are not permitted". 40 Fed. Reg. 28955 (July 9, 1975). A reasonable corollary of this provision would be that blanket requests for certain information on a broad category of individuals are not permitted.

The enabling legislation creating the Inspector General's office, in addition, permits disclosure "in the same manner and to the extent [the information] would be available to the Comptroller General." It is difficult, however, to conceive of a situation where the Comptroller General in carrying out his audit-investigative functions could properly make the sort of broad request at issue here for the purpose of matching records to determine whether violations of law have occurred. We recently expressed our reservations to the General Accounting Office concerning a proposal whereby agencies would furnish the Commission with a list of individuals against whom Federal agencies have a claim for unpaid debts to match against records of current and retired Federal employees for the ultimate purpose of assisting agencies in debt collection. A copy of our comments to the General Accounting Office is attached.

Notwithstanding the above, we believe an argument can be made that subsection (b)(2) of the Act sanctions disclosure under these circumstances That provision permits disclosure where it would be required by the Freedom of Information Act. Admittedly, it is not clear that Congress contemplated one agency would use the FOIA as the basis for requesting agency records from another. On the other hand, agencies have received a multitude of requests for records from members of Congress under the Act and it seems no more inappropriate for an agency to use the Act as a basis for disclosure of records to another agency than for Congress to use it in a similar fashion.

The use of the FOIA as a basis for disclosure requires consideration of exemption (6) and whether or not the invasion of personal privacy that would ensue from disclosure of the information involved in this program would be outweighed by the public interest served thereby. The only items of information involved here that are not considered in the nature of public information as prescribed by Commission regulations at 5 CFR § 294.702 would be employee social security numbers and dates of birth.

there would be a substantial public interest served by the disclosure is clear from the nature of the proposed program. It has been estimated that the program would result in a potential savings of $10,000 for every identified case of abuse. The statutory scheme establishing the Office of Inspector General itself suggests the public benefit that would be served by its operations. Finally, the reported discussion of Project Match in a Cabinet-level meeting reflects a determination at the highest Executive Branch level that this projected program promises to yield dividends for the general public in terms of tax dollar savings.

When the public interest to be served is balanced against the minimal invasion of personal privacy that would occur, it seems clear that the former would predominate and require disclosure under the FOIA thus permitting disclosure under (b)(2) of the Privacy Act. We understand that this is the substance of the approach discussed with you as the basis for our cooperation in a recent meeting involving the Executive Director of the Commission and the Deputy General Counsel.

Apparently, the Departments of Agriculture and Labor are interested in similar initiatives to detect abuses found in programs for which they are responsible. Since we are not aware of legislation similar to that creating your office which at least suggests disclosure of information may be permitted notwithstanding the restrictions contained in the Privacy Act, we would feel a greater reluctance to furnish information for matching purposes to those agencies. Because the Commission will apparently be faced with additional requests from other agencies in the future, perhaps the best solution for determining the legality of providing this type of information to agencies in general for "match-type" projects would be to seek guidance from the Justice Department. If we can assist you in this regard, please let us know.

Sincerely yours,

for

Carl F. Goodman
General Counsel

Attachment

APPENDIX B

December 8, 1977

The Hon. Joseph A. Califano, Jr.
Secretary
Department of Health, Education
and Welfare
Washington, D.C.

Dear Mr. Secretary:

In its commendable desire to eliminate welfare abuse, the Department of HEW has failed to consider the serious threat to privacy posed by its computer search operation known as Project Match, which you announced in your press conference of November 9.

We understand that Project Match is intended to permit a general search of the personnel records of government employees for evidence of welfare fraud. The assumption within the Department seems to be that the benign purpose of Project Match insulates it from criticism based on privacy concerns. The fact that this particular computer use is designed to eliminate welfare fraud, however, does not in any way lessen the massive threat it poses to individual privacy. Indeed, this very type of search operation was highlighted in the Privacy Protection Study Commission's recently released report, *Technology and Privacy*. The Report noted that "the ability to search through hundreds of thousands, or even millions, of records to identify individuals with particular characteristics of interest is at once the most important gain, *and the most important source of potential harm*, stemming from the automation of large-scale personal data record keeping systems, . . ." [emphasis added].

While much of the literature on technology and privacy points up the need for new laws to protect privacy rights, the implementation of Project Match is particularly disturbing because it violates the spirit, if not the letter, of existing law. The Privacy Act of 1974 restricts the disclosure by federal agencies of personally identifiable information unless the subject has consented. Although the release to HEW of payroll records for the purpose of identifying welfare recipients does not appear to have been within Congress' intent when it enacted certain exemptions to the Privacy Act's general prohibition, the Department obtained a computerized military payroll under the "routine use" exception to the Act.

When the Department approached the Civil Service Commission to obtain access to the master tape of federal civilian employees, the Commission determined that disclosure of the information would violate the Privacy Act. The Commission nevertheless released the information to the Department, citing the Freedom of Information Act in support of its decision. A federal agency, however, is not a person within the meaning of the FOIA and therefore cannot gain access to records under the Act.

We believe that Project Match, whether or not it is technically in violation of the Privacy Act or the Freedom of Information Act, is precisely the kind of data-matching operation that the Privacy Act was meant to prevent. Certainly, the examination of a list of federal employees against a list of welfare recipients is incompatible with the purpose for which either of those record systems was originally compiled. HEW itself, in the 1973 Report of its Advisory Committee on Automated Personal Data Systems, Records, Computers, and the Rights of Citizens, identified as one of the cardinal principles of a code of fair information practices that personal data obtained for one purpose must not be used or made available for other purposes without the individual's consent.

Project Match exemplifies precisely the kind of manipulation of personal data that people most fear when they contemplate the vulnerability of their privacy in a computer age. The demonstration of public concern in recent years over the proliferation of uses of the Social Security Number and its de facto transformation into a universal identifier is testimonial to a growing awareness of the ease with which separate data systems can be brought together for comparison and amalgamation. If the government can now match federal and even private payrolls against the welfare rolls, why should it not, as some future time, match the federal payroll against computerized lists of medical and other social services beneficiaries, or against computerizes lists of contributions to political parties, or ggainst computerized indexes of police intelligence records? In each of these instances, a case could be made for the usefulness of the resulting "hits," in terms of administrative efficiency or law enforcement or any of a number of socially desirable ends. The same techniques and justifications could readily be used to search for social or political "deviants" as are now being used to search for welfare "cheaters."

We must also take exception to the argument that Project Match is acceptable because its ultimate end is law enforcement. We cannot think of any better example of a constitutionally proscribed general search than a random rummaging through the contents of massive records systems on the chance that "something will turn up." Here, people become the targets of a search merely because they are members of a category--government employees or welfare recipients. Project Match is intentionally designed as a general search, since there is apparently no evidence to direct suspicion of fraud to any particular member of these groups; it is a classic fishing expedition.

The danger of Project Match is that its goal, to expose and control welfare fraud, is one of which everyone canaapprove. But in light of HEW's own historical leadership in defining issues of individual privacy raised by the data-keeping practices of governmental agencies, we would expect HEW to be more sensitive to the long-range implications of an operation such as Project Match.

We urge you to reconsider the Departmentàs approach to the detection of welfare fraud and to devàlop methods of investigation less damaging to privacy and civil liberties than Poject Match.

Yours sincerely,

John H.F. Shattuck
Director

APPENDIX C

Exhibit A

AFFIDAVIT OF ALLAN G. RODGERS

I, Allan G. Rodgers, on oath depose and say:

1) I am an attorney and director of the Massachusetts Law Reform Institute, a program that provides legal services to poor people and support to persons in other legal services programs in the state. On October 14, 1982, I and several of my colleagues met with Henry Cretella, General Counsel, Joseph Gallant, Assistant to the Commissioner and Fred Brown of the Commissioner's Control Center, all employees of the Department of Public Welfare. All three had been working on, or were involved in meetings about, the Department's bank account computer matches. The information set forth in paragraphs 2-9 of this affidavit is taken from what one or more of these three persons told us at that meeting.

2) In August of this year the Department started to match by computer the social security numbers of all members of the assistance units of all six assistance programs operated by it (Aid to Families With Dependent Children - AFDC; General Relief - GR; Food Stamps; Medicaid; Supplemental Security Income - SSI; and the Refugee Resettlement Program - RRP) with the social security numbers of account holders in certain banks in the state. These matches have been completed in phases as banks have

agreed to them. To mid-October, four matches had been done with a total of about 10% of the state's some 1,000 banking institutions. These four phases matched only social security numbers, not names or other identifiers. It appears that the Department furnished its own tapes to each bank, which matched the tapes with its own tapes and sent the matches back to DPW for further screening.

3) Upon receiving the raw information from the matches with the banks, the Department eliminated from consideration those cases where the amount in the accounts did not exceed the asset limit for each assistance program in which the individual's assistance unit was participating. It also screened out cases where the account was within $500 of the assets limit ($250 for GR individuals) and referred those cases to the local welfare services offices for further checking, but see ¶15, infra. It then issued immediate termination notices to those remaining "hits." As of October 13, 1982, 1,621 termination notices had been mailed to recipients of all programs except SSI. SSI cases were referred to the Social Security Administration, which has chosen to investigate cases Before taking action on them.

4) Contrary to prior DPW practices, including practices on wage matches, the termination notices were not sent from the local welfare offices but centrally from the Commissioner's Control Center (CCC) in Boston. Prior to sending the notices, the Department did not contact the banks to inquire about whether the names of those to be terminated were on the accounts or whether there were any errors in the social security numbers at

the banks or at DPW. Neither did the Department first review the recipients' case files to see whether there was a satisfactory explanation of the bank account or a record that the recipient had previously reported the account. Nor did the Department undertake any redetermination of current eligibility. The Department did not initially send any information on the bank accounts or the terminations to local offices, with which recipients are used to dealing, but the termination notices instruct recipients to contact persons at the CCC in Boston. The termination notice itself, a copy of the computer printout showing the bank account and any other information collected by the CCC are sent to the Department's representative at hearings (usually the assistant director of the community service area). No instructions have been given as to whether or not these papers are placed in the recipients' case file nor as to when and how they may be made available in the local welfare service office to the recipient or her representative prior to the hearing, and DPW central office people do not know what the local office practices are.

5) All persons sent termination notices have had their cases referred to the Bureau of Special Investigations for a fraud investigation. Recipients are not specifically notified of a BSI referral. There are no written instructions on whether a copy of the fraud referral form is usually placed in the recipient's case file, and DPW central office people do not know what the local office practices are.

6) As of mid-Octobver, 30% of the persons receiving

termination notices had appealed for a fair hearing to challenge their terminations. This is six times the usual appeal rate of 5%. Of those who have appealed, the Department says that half involve errors in social security numbers. This is an error rate of 15% of all those who were sent termination notices. Most of the errors have occurred because bank records contained incorrect social security numbers.

7) The Department, through its attorney staff, has adopted a policy of filing civil court actions against recipients to recover alleged overpayments of assistance as a result of undisclosed excess assets, and to secure ex parte attachments of the bank accounts revealed by the computer matches. As of mid-October, the Department had filed some 100 of those actions.

8) The Department plans to continue the computer matches, as banks agree, until all banks in the state are included. It may do future matches by using the first two letters of each person's last name as well as social security numbers.

9) The Department did not request or receive from the federal government any approval or waiver to conduct these computer matches, except that it requested from the Department of Health and Human Services a waiver of application of error rate fiscal penalty standards to the undisclosed assets uncovered by the computer matches.

10) On September 10, 1982, the Department filed with the Massachusetts Secretary of State a purported emergency regulation, State Leter 607, regarding undisclosed assets and

rules governing bank accounts of recipients in the AFDC program. Attached as Appendix A is a copy of the page which I obtained from the Secretary of State's Office, containing the Department's statement of the emergency which claims to have justified making the regulation effective without going through the notice and comment requirements of the state's Administrative Procedures Act. Henry Cretella, the Department's General Counsel, told me on October 18 that the Department was rethinking S.L. 607 and might well make some changes in it.

11) Since our office is a state support center for all legal services programs that represent poor people in the state, we have been in constant touch with lawyers and advocates across the state who have been approached by recipients who have received termination notices as a result of the bank account matches. We have made a survey of these programs and count 101 families, of the 1,621 who received termination notices as of mid-October, who are being represented by legal services programs, which are virtually the only source of legal assistance for these recipients. This represents only 21% of those who have requested fair hearings on their terminations. In additioin, 24 (or nearly 25%) are pure errors, and most of the rest are cases where the recipient clearly does not own or have access to the account.

12) At the request of the Department of Public Welfare, our office secured copies, with names of recipients erased, of 23 fair hearing decisions on bank account match terminations. These were said by Department representatives to be the only decisions available on this topic at the time we obtained them on October

26. I personally have reviewed these decisions. Copies are available upon request, and I have numbered them 1-23. Of the 23 decisions, 10 resulted in favorable decisions for the welfare recipients. Of these 10 favorable decisions, 5 represented pure errors in social security numbers (2 of which were the errors of the Welfare Department) which could have been corrected by communicating with the bank (#1,2,3,4, and 21). Five other recipients won their appeals at the hearings. Four of these wins involved the withdrawal by recipients of funds so that at the time of the notice of termination, or at the time of the hearing, the amount remaining in the account was below the applicable asset limit. (#5,6,8 and 9). In only one of these cases was the recipient able to prevail on the argument that no one in the assistance unit had access to the bank account (the account was in the name of the separated father for a son who was in the assistance unit - #7).

13) The Department's practice is to list the name of a representative who appeared at the hearing for the recipient, on the lower left of the last page of the decision. Of all the recipients who appeared at the hearings in these cases, none was apparently represented by a lawyer or by an experienced advocate. One recipient was represented by a social worker at the nursing home in which she resided (#16). Two others apparently had friends or neighbors assist them (#2,8). All other recipients were unrepresented at these hearings.

14) Three recipients who appealed for a fair hearing had their benefits terminated, prior to the hearing, despite their

having filed a timely appeal, in apparent violation of law (#3,18 and 21). In two of these cases, the recipient prevailed at the hearing (#3 and 21).

15) Despite the Department's claim that it was not terminating recipients where the computer match showed a bank account within $500 of the asset limit ($250 for GR)(see #3 of this Affidavit), these decisions show seven cases where termination notices were sent even though the alleged assets were within the tolerances (#5,8,11,13,19,20 and 21). In three of these cases, the appellant won (#5,8 and 21). In one case, the AFDC family was terminated for being $26 over the asset limit (#20).

16) In five of the cases, the recipient's benefits were ordered terminated by the referee as of the date of the hearing rather than later as per the termination notice (#14, 15, 17,19 and 22).

17) So far as appears from the hearing decisions, the only evidence presented by the DPW representatives was the results of the computer match itself. In each case, therefore, apparently the recipient had the burden of coming forward with evidence to disprove the computer match information.

18) There are many inconsistencies among these decisions on what rules should be applied as to the timing of counting the assets as being in excess of the asset limits. In four cases (see §12 above) the recipient won the hearing because of a later spend-down on the account below the asset limit, despite the fact that the computer match showed that the recipient had earlier

been over-asset. In six other cases the recipient lost the hearing despite the fact that the the account was below the asset limit on the date of the termination notice or on the date of the hearing (#10,11,12,17,18 and 19). These decisions thus do not reveal any consistent rules that are applied to this issue.

19) In 13 of the cases, the recipient's appeal was denied. In nearly all of these decisions, it is my judgment that the hearing decision is either wrong on its facts, or is seriously open to question on factual or legal grounds. A summary of these hearing decisions follows:

(a) The recipient had a joint account with her 17 year old son, consisting of his money which he had received from his father and had earned. After the match and before the hearing, the son withdrew a substantial amount of money (putting the account below the asset limit) in order to pay a debt to his grandfather (#10).

(b) This recipient was alleged to be $276 over the AFDC asset limit. She testified that most of the money belonged to her brother who was in the army in Germany. She had previously disclosed this account to her social worker, who had told her not to worry about it. Some money was withdrawn and sent to the brother prior to the date of the hearing, leaving the account below the asset limit (#11).

(c) The recipient had admitted "that the bank accounts are hers, an account with her daughter and her daughter's account with her father." It was held that since the recipient and her dependents had access to the accounts, they were attributable to the assistance unit. The facts set forth in the opinion do not indicate whether her daughter is a minor and are otherwise too skimpy to enable one to tell whether the decision is correct (#12).

(d) This General Relief recipient had a $500 bank account jointly with her sister, and said that the money belonged to her sister. Prior to the termination notice, the account was changed and put in her sister's name in trust for the recipient (#13).

(e) The recipient held a joint account with her daughter, of which she testified she owned less than the asset limit (#14).

(f) Recipient mother and her son held a joint account, consisting of money left to her son by will (#15).

(g) Recipient, a resident of a nursing home, held a certificate of deposit in trust for a local funeral director, to be used for her funeral expenses. Her Medicaid was ordered terminated (#16). This decision is clearly wrong, because under federal regulations a burial contract amount is an exempt resource. See 42 CFR §§435.322 and 435.845(d); 20 CFR §416.1201(a)(2)

(h) Recipient held a term deposit and stated she was not aware of the resource limits. Prior to the hearing, she withdrew the money and said she intended to use it to prepay funeral expenses for herself and her two children (#17).

(i) Recipient said that money in an account held jointly in the name of herself and her son belonged to her son, who was in the service. Two days before the notice of termination, she withdrew enough to leave the account below the asset limit. Three days after the termination notice, she withdrew the balance and sent it to her son. The referee held that she could reapply for GR because she no longer had the asset, but stated that she was ineligible for food stamps, because she had an account exceeding $1500 as of the termination notice date. This is clearly wrong, because according to the facts cited in the referee's decision, her account contained $1,110 as of the termination notice, which is below the $1500 asset limit for the food stamps program (#18).

(j) Recipient held a bank account jointly between herself and her two sons, which was $177.99 over the AFDC asset limit on June 30, 1982. She subsequently withdrew $600, so that she had $577.99 on the date of the notice of termination. She also stated that she had tried to report the account to her social worker but it was not listed by her worker because she said the money belonged to her sons (#19).

(k) This AFDC recipient held five bank accounts, totalling $1,026 as of the date of the computer match, in trust for each of her five children. She said the money was given to her children by their grandmother to be used for the education of her children. There had been no activity on the accounts since 1979. The referee ordered her assistance terminated, but requested the Department to allow her to reduce her account below the $1,000 asset limit and to reapply. The referee also asked the Department to forego recoupment (#20).

(l) Recipient had one account of slightly below $2,000 in her own name. In her GR application filed on April 27, 1982, she declared she had no assets because she thought she could have $2,000 in the bank. She also held a second account jointly with her mother, who was a nursing home resident, which she claimed belonged to her mother (#22).

(m) Recipient held a $20000 term deposit certificate and a $6,887 savings account each in trust for her mother, whom she showed inherited that money. In 1977 she disclosed these to her social worker, and no action was taken. The daughter had not withdrawn any of the money sinces she received it (#23)(see affidavit of Joan Black - Ex. I).

Signed under the pains and penalties of perjury this 3rd day of November, 1982.

Allan G. Rodgers

APPENDIX D

STATUS REPORT ON HEW EMPLOYEE/SSI RECIPIENT PILOT PROJECT AS OF OCTOBER 26, 1978

The data on the pilot matching program between SSI recipients and HEW employees is not yet complete. We are currently in the process of requesting detailed reports from the SSA District Offices on numbers of overpayments and numbers of ineligibles found as a result of the matching program.

The matching program resulted in 638 "raw" hits. The HEW Audit Agency determined that of these "raw" hits, 480 were not worthy of further investigation because employment period and SSI payment period were not the same or because the file of SSI recipients contained those who had applied for SSI but who had not actually received payments. Of the original "raw" hits, 158 cases were forwarded to the SSA Integrity Staff for further study.

The breakdown of the 158 cases is shown on the enclosed chart. Of the 158 cases referred, the report shows that 41 cases are still under investigation for fraud and 55 fraud investigations have been closed with no further action to be taken. Also, 15 cases are still being investigated in the non-fraud area while 45 have been closed. Two cases have been referred for prosecution as of October 26, 1978, one in New York and one in Philadelphia. The cases listed under non-fraud in the District Offices reflect cases with problems in the social security numbers which are being resolved by those offices.

OIG/HCSR/JAllen/kdg/11/3/78

FILE COPY

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE

[From the New York Times, Mar. 13, 1984]

IRS PILOT PROGRAM TAPS COUNTY COMPUTERS

(By David Burnham)

WASHINGTON.—An Internal Revenue Service office in Texas is seeking to establish electronic links with the computers of 80 counties that will provide it instant access to local records concerning property taxes, voter registration and automobile ownership.

The IRS, which already has established such a link with one county in Texas said it would use the information to track down individual who had failed to pay their taxes.

Spokesman for the revenue agency in Dallas and Washington said the Texas project had not yet been attempted in other sections of the country.

According to critics of the plan, the project raises the question of whether the impact of information, changes when it can be instantaneously assembled. Although the information that will be transmitted to the service by computer terminals has long been publicly available, the project has been critized by conservative Texas politicians and a spokesman for the American Civil Liberties Union.

The criticism voiced by several members of the commission that governs Tarrant county, the area around Fort Worth, was so sharp that two weeks ago the IRS withdrew its proposal to establish a direct link with that county's computers.

"This was just another extension of the drive by the federal government to gradually increase its power over local govenments," said B.D. Griffin, a Tarrant county commissioner.

Secretary of State John W. Fainter, Jr., raised another objection, saying, "The specter of the IRS having direct access to voter registration records may intimidate those persons considering registering to vote."

But Glenn Cagle, the director of the IRS district that covers 143 counties of northern Texas, defended his plan as a way of reducing the costs of gaining information the government could obtain anyway and said he was surprised by the opposition.

"I am not going to speculate on the motives of the critics," he said. "But the fact is this is an election year."

An IRS spokesman in Washington, Scott Waffle, said he too was surprised by the adverse reaction. "All that is happening down there is an effort to improve the government's efficiency by lessening the cost of obtaining information that always has been available to anyone who asks for it," he said.

Mr. Waffle added that the project was not the result of a national directive to the IRS's 63 districts, and that as far as he knew it was not currently being pursued in other regions.

The district that is moving to develop direct computer links has its headquarters in Dallas. In 1982, the individuals and businesses within its borders filed 4,858,821 of the 171 million tax returns the agency received.

Last summer, Mr. Cagle wrote each of the counties requesting information about the extent to which their records were computerized and whether they would be interested in the project to give the IRS direct access to them.

Marlene Gaysek, an agency public affairs official in Dallas, said the district was negotiating with 80 of the counties and expected to complete arrangements with 20 of them soon.

According to the contract that has been signed with Dallas county, which has 1.6 million residents, the IRS will have a county terminal in its Dallas office that will allow its 2,000 employees to make nearly instantaneous checks about the property owned and the property taxes paid by every person in the county, the name and address of all persons with a registered vehicle, the make, year and weight of that vehicle, and the name and address of every registered voter.

Although the IRS requested access to all the data in the voter registration files, the Dallas county commissioners ruled the agency could not obtain the dates of birth, Social Security numbers or telephone numbers of individuals.

Miss Gaysek said the computer links would save the agency about $200,000 a year because lower-paid clerks, rather than field agents, would be able to gather information, and travel costs would be avoided.

She said the district office would not use its computer access to compile complete new lists of all individuals living in an area that then would be matched against computerized lists of taxpayers.

"There has been a real misunderstanding," she said. "We're not taking wholesale lists for computer matching purposes; we are using our direct access to track individual taxpayers. We need this detailed information when we file a tax lien against someone or check to make sure a taxpayer's financial statement is correct."

James C. Harrington, an attorney in the state office of the ACLU in Austin, said that even though the information the IRS would receive by computer was public, the use of county data conflicted with one of Congress' chief goals in protecting federal records: a guarantee in the Privacy Act that the information an individual provides the government for one purpose will not be used for another without the individual's permission.

"We generally oppose this kind of cross-computerization because, despite what any agency says, history tells us that the information the IRS is collecting will be compiled into a giant centralized data base," he said. "History also teaches that we have to develop appropriate legal restraints on all government agencies."

Tony Bonilla, the chairman of the National Hispanic Leadership Conference, said, "The bottom line is that this project is not necessary. The IRS already has enough information about every taxpayer."

OTHER ECONOMIC INDICATORS

	Period measured [1]	Units	Current month	Previous month	Year-ago month
BALTIMORE					
Unemployment:					
City	December	Percent	8.2	8.4	11.4
Metro	do	do	7.0	7.0	9.8
Employment:					
Manufacturing	January	Thousands	141.1	142.0	135.3
Nonmanufacturing	do	do	791.8	812.6	775.1
State and local government	do	do	147.3	150.0	150.6
Federal government	do	do	53.2	53.5	53.5
Consumer price index	do	Percent	5.8	3.6	2.7
Sales:					
Total retail	December	Millions of dollars	1,194.0	975.0	1,005.0
Department store	do	do	202.0	122.0	181.0
MARYLAND					
Unemployment	December	Percent	6.2	6.2	8.4
Employment:					
Manufacturing	do	Thousands	209.3	209.2	206.2
Nonmanufacturing	do	do	1,524.1	1,492.4	1,474.3
State and local government	do	do	266.0	266.0	264.2
Federal government	do	do	129.7	129.5	130.0
Sales:					
Total retail	do	Millions of dollars	2,459.0	2,036.0	2,124.0
Department store	do	do	413.0	258.0	381.0
Housing permits:					
Public buildings	do	Number of units	0	0	0
Single family	do	do	2,039.0	1,896.0	1,633.0
Total	do	do	2,415	2,393	1,922
Mobile homes shipped	January	do	100	100	100
Private building, nonresidential	March	Millions of dollars	56.2	48.3	67.5
Cash receipts from farm sales	November	do	101.2	129.3	95.2
UNITED STATES					
Gross national product	4 quarters	Billions of dollars	3,437.3	3,362.2	3,109.6
Unemployment, including military	February	Percent	7.7	7.9	10.4
Employment:					
Manufacturing	do	Millions	19.3	19.2	18.1
Nonmanufacturing	do	do	71.7	71.4	69.5
State and local government	January	do	13.0	13.2	13.0
Federal government	February	do	2.7	2.7	2.7
Consumer price index	January	Percent	6.9	1.6	2.9
Total retail sales	do	Billions of dollars	91.4	125.0	81.3
Housing permits	do	Thousands of dollars	108.0	107.4	84.2
Cash receipts from farm sales	November	Billions of dollars	14.3	14.7	16.2

[1] Although figures are released monthly (except for the U.S. Gross National Product, which is released once each 3 months), they don't all provide monthly totals. Employment figures are the actual totals for that month; the GNP and CPI figures are annual rates based on the most currently available information; other figures provide the volume of sales or housing permits occurring within the single month measured. Figures are frequently subject to revision in subsequent months.

[From the Portland Press Herald, Portland, ME, Oct. 31, 1983]

LIST MAKERS REJECT IRS DEMAND FOR DATA

WASHINGTON.—The three companies that compile computerized lists of the estimated incomes of most American households have refused to give the Internal Revenue Service access to their lists so it can test use the information to track down tax evaders.

The companies, in separate interviews, said such government use of their lists would be improper and would not work. An executive of one of the companies called the project "absolutely ridiculous."

Their refusal appears to represent a significant setback to the $770,000 IRS plan to find out if the commercially prepared marketing lists can help the government reduce the increasing number of Americans who pay no taxes. At the least, the refusals will delay the project a few months.

The three companies are the Donnelley Marketing Service of Stamford, Conn., the R.I. Polk Co. of Detroit and Metromail of Lincoln, Neb.

Each uses somewhat different computerized techniques to prepare its list. But in general, all are based on combining information from such publicly available sources as the Census Bureau, telephone directories and motor vehicle registrations in a way that allows the companies to identify virtually all households and make roughly accurate guesses about their incomes, family size and other characteristics.

Although the IRS refused to discuss the status of its project, a detailed IRS description of it indicates that the service planned to initiate the test in six cities on Feb. 15. The computerized records of taxpayers in Brooklyn, Cheyenne, Wyo., Cleveland, Indianapolis, Milwaukee and Reno were to be matched against a computerized list showing the estimated income of all those living there.

The agency's description estimated that the list could cost up to $100,000. But because of the lack of cooperation by the companies, the project is already at least two months behind schedule.

"I have just about given up trying to get a list for the IRS," said Brandt Turner, an official with Dunhill of Washington, a company that specializes in locating mailing lists for government agencies. "The possibility of success is rather low now."

In addition to the companies' objections, concerns about the implications of the experiment have been expressed by a Senate committee and two House subcommittees.

Recently, Rep. Glenn English, chairman of the government operations subcommittee on government information, justice and agriculture; and Rep. Doug Barnard Jr., chairman of the subcommittee on commerce, consumer and monetary affairs, wrote the IRS asking that they be kept fully informed about the experiment. Both are Democrats, English from Oklahoma and Barnard from Georgia.

"There is clearly a need to explore reasonable, cost-effective methods of increasing the collection of tax revenues due the government," they told Roscoe L. Egger Jr., the commissioner of internal revenue.

"At the same time, however," the congressmen continued, "federal agency plans to increase the compilation and computerization of personal information raise legitimate concerns about loss of privacy. It is not always easy to balance the competing interests of privacy and efficiency. This is a gray area, and it is important to proceed with caution, deliberation and knowledge."

Meanwhile, the oversight subcommittee of the Senate Government Affairs Committee, whose chairman is Sen. William Cohen, R-Maine, has begun a separate inquiry. It is an extension of a series of hearings into the government's increasing use of computers to match various official and industry files.

The Donnelley Marketing Service, a division of Standard and Poor's, is one of the principal developers of the lists, which have been used by direct-mail advertisers to reach special markets.

"It is inappropriate for the IRS to use the kind of lists we produce to identify errant taxpayers," said Richard Vincent, director of marketing for Donnelley Marketing. "This IRS experiment is ill conceived because such lists are not accurate on an individual basis, but only in the aggregate. We will have nothing to do with this project."

Explaining the uses of the lists for advertisers, Vincent said: "If a company wants to send a mailer to all American families with incomes over $40,000, we rent it a list for a one-time use.

[From the New York Times, Aug. 29, 1983]

PRIVATE COMPUTERS' INCOME DATA TO AID I.R.S. IN HUNT FOR EVADERS

(By David Burnham)

WASHINGTON, August 28.—The Internal Revenue Service is about to test whether computerized information about the life styles of American families can be used to identify individuals who fail to pay their income tax.

The information includes the neighborhoods in which families live, how long they have lived there and the model and year of the cars they own, and will be supplied by the private marketing companies that sell computerized lists to direct-mail concerns, among others. For some time, these marketing companies have been compiling income estimates from such data, using the publicly available records of telephone companies, motor vehicle departments and the Census Bureau.

If the new computerized procedure to target those Americans who pay no taxes is successful, the I.R.S. has a second experiment in store, to determine whether the same procedures can be used to spot those who underpay their taxes.

DECREASING TAX COMPLIANCE

The attempt to use life style information to estimate the annual incomes of households, and thus help the revenue service select individuals for further investigation, reflects the agency's increasing concern about the growth in the number of Americans who are failing to pay their taxes.

According to the latest Government report on income tax compliance, the number of individuals and corporations not paying income taxes has been gradually increasing in recent years. Individuals who did not file any income tax returns in 1981, for example, are estimated to have reduced Government revenues by about $3 billion that year. In 1973, such individuals are estimated to have owed the Government about $1 billion.

The service estimated that in 1981 the total of taxes underpaid by corporations and individuals engaged in legal activities was $81.5 billion.

The report added that the percentage of all income voluntarily reported declined from 91.2 percent in 1973 to 89.3 percent in 1981, more than two-tenths of a percentage point a year.

The new attempt to find what the I.R.S. calls "nonfilers" is made possible by the increasing power of Government and commercial computers to store enormous amounts of information and to manipulate this information at a very small cost.

Walter E. Bergman, the revenue service's deputy assistant commissioner for planning, finance and research, explained the concept to be tested.

"The idea is, we'll take a list of individual households and their estimated income and match it against a computerized list of all taxpayers," he said. "If the check suggests a family hasn't paid, we'll make an inquiry to find out why. This is no big deal."

Robert Ellis Smith, the publisher of Privacy Journal, disagreed.

PRIVACY QUESTIONS RAISED

"The I.R.S. experiment is very troublesome," he said. "While I am quite sure it does not violate the law, it graphically demonstrates the growing links between Government and private computers. National lists of households and their incomes obviously are sufficiently accurate for soliciting business, but that doesn't mean they are precise enough to trigger investigations."

The information used by the private companies to estimate the annual incomes of individual households is all legally available. The sources of the data are telephone books, the automobile registration files from the 30 or so states where they have been declared a public record, and statistical information about the average incomes of the families living in different census tracts, which is compiled and published by the Census Bureau every decade. The income information compiled by the bureau is supplied by the individuals and families counted.

I.R.S. CITES MANDATE

Mr. Bergman stressed the importance of maintaining the nation's tax system and that compliance with the tax laws had been gradually declining.

"To have a free society, we have to have a viable Government," he said. "And a working tax system is essential to government."

Mr. Bergman denied that a system in which the estimated incomes to all Americans were compared with their tax returns would undermine the principle that law enforcement should focus on individuals it suspects of committing a specific crime.

"The allegation that we are considering people guilty before their day in court, I can't see that at all," he said. "And besides, the Revenue Code gives us a statutory mandate to periodically inquire after the liabilities of taxpayers, to conduct canvassing operations."

TEST TO BEGIN SOON

The official said the test to determine whether life style information can be successfully used to target delinquent taxpayers would be initiated within the next few months. It would take at least a year and a half to complete and would be conducted in six of the agency's 60 districts, he said.

"There are a number of questions we have to look at about this concept," Mr. Bergman explained. "First, the list of households provided by the private companies does not have Social Security numbers, so the matching with the tax returns will have to be done by name and address. This may not work. Second, many households file more than one income tax return. Third, there sometimes is a difference between an individual's wealth and an individual's income that may cause problems. Finally, it remains to be seen whether the estimated income figures are sufficiently accurate for our purposes and, if they are, whether the targeting results in a significant increase in our collections."

ESTIMATION METHODS VARY

There are more than a dozen companies currently producing computerized lists of American households, their addresses and their estimated income. The three largest companies reportedly are The Reuben H. Donnelley Corporation of New York, R. L. Polk & Company of Detroit and the Metromail Corporation of Lincoln, Neb.

The techniques of the different companies vary. But according to several industry experts, one of the more complex methods is used by Donnelley. That corporation's national list begins with the telephone book. As each new city telephone book is published anywhere in the United States, the names, addresses and numbers in it immediately are fed into a computer by a Donnelley division in Nebraska. A special program then places each of these households in its appropriate Census Bureau tract, which includes information on the median income of the households within its borders.

LENGTH OF RESIDENCY A FACTOR

There are two more major steps in the Donnelley process. Because studies have shown that people who live at one address for a long period tend to have higher incomes that those who are mobile, the computer is instructed to adjust the estimated income up or down according to how long the telephone book data shows the family has lived at the same location.

Finally, information on the car or cars registered in the names of individuals living at each address is added to the equation. This information is made available to private companies by some motor vehicle departments, although New York, New Jersey and Connecticut bar release of such information to those concerns. Using complex computerized formulas, the estimated household incomes again are adjusted according to the make, model and year of the registered cars.

In addition to testing the value of commercially developed lists of estimated income, Mr. Bergman said the I.R.S. is experimenting with a second procedure that uses computerized public records to track down individuals who fail to pay capital gains taxes they owe from the sale of real estate.

This second approach is based on information collected from the recorders of deeds in counties all over the country by a Florida company, Real Estate Data, Inc. The president of the Miami concern, James D. Metcalfe, said his company now collects information about 1.5 million property transfers each year. He estimated that four million such transfers were completed last year.

Mr. Metcalfe said his customers were about 30,000 real estate brokers, lenders and title companies wishing to keep up with the market. He stressed that he also collects and computerizes information from county tax assessors but that this data had not been sold to the I.R.S.

COST IS QUITE REASONABLE

"County tax assessors usually are politicians, and they are very sensitive about how their data are used," he said.

Mr. Bergman said that the revenue service had purchased the information drawn from the deeds filed in two counties and was now seeking to determine whether it would help the Government identify property owners who did not pay the appropriate tax.

"This is public information that would be much too expensive for us to collect on our own," he said. "But because Real Estate Data is collecting and selling the data to a large number of customers, the cost to us is quite reasonable."

[From Computerworld, Mar. 26, 1984]

DIRECT MARKETING GROUP ASSAILS IRS MATCHING PLAN—DIRECT MAIL LISTS TO BE USED TO LOCATE TAX EVADERS

(By Paul Korzeniowski)

The Internal Revenue Service's plan to use direct mail lists to locate tax evaders has drawn fire from the Direct Marketing Association (DMA), a coalition of 2,400 direct mailing companies.

"Those lists are designed for marketing purposes and should not be used for law enforcement," said Jonah Gitlitz, the DMA's senior vice-president.

The DMA fears that citizens will be afraid to release information that marketing personnel need in order to target prospective customers. "If the public thinks the IRS may use the information, they will be less likely to cooperate," Gitlitz claimed in a recent interview.

By matching 1982 tax filer lists against a mailing list from Washington, DC-based Dunhill Co. that cost the IRS $49,000, the IRS hopes to locate 1,200 tax evaders in each of four test locations: Milwaukee, Bronx, NY, Nevada and Indiana [CW, Sept. 1, 1983]. Dunhill's list contains 2 million names equally divided among the four locations.

"The list provides information such as name, address, estimated household income, age of occupants, spouse and number of people in a household," said Wilson Phadely, public affairs officer at IRS. "Dunhill uses public information such as census track and real estate data to develop the list."

These lists are used primarily for locating potential customers and may contain inaccurate information, according to Gitlitz. "Direct marketing companies do not qualify the accuracy of each entry," Gitlitz said. "These lists are used primarily for targeting prospective customers, not for keeping a dossier on every citizen."

Dunhill was not the first company that the IRS approached, according to the DMA. "There were a number of direct marketing companies that were not willing to rent their list to the IRS," Gitlitz said.

IRS' Phadely said that Milwaukee will serve as the first test site, where the IRS is running the Dunhill list against the government's 1982 Milwaukee tax return list.

"Our system [a National Advanced Systems, Inc. AS/9060] is able to match lists easily," Phadely said. "Annually, we match tax returns against the previous year's return. We have almost completed the computer matching between the Dunhill list and 1983 Milwaukee tax filers list. By April 1, we will mail a list of prospective nonfilers to the Milwaukee office."

Potential nonfilers will be given the opportunity to respond to charges. "In May or June, the local IRS office will mail to [prospective] nonfilers a notice asking why they did not file a tax return," Phadely said. "If they refuse to respond, their cases will be handled like other investigations."

Later this year, this process will be followed in other test sites. When the four test cases are completed, the IRS plans to do a cost benefit analysis on the project. "We estimate that in 1981, there was $3 billion in uncollected taxes," Phadely said. "We hope that techniques like computer matching will help us collect a portion of this money."

If the pilot program is cost effective, the IRS must decide if it wants to implement the system nationally. DMA staunchly opposes nationwide implementation. "Our members will not cooperate with the IRS' plans," Gitlitz said.

[From Forbes, Sept. 26, 1983]

NO MORE MR. NICE GUY

(By Allan Dodds Frank)

The advertisement in the *Commerce Clearing House Daily* was clear enough. The Internal Revenue Service was advertising for information from anyone who could provide names, addresses and annual incomes of Americans.

That little ad is part of a new effort by the IRS to collect taxes from all those folks who seem to live well and fail to report. If the IRS can get it cheaply enough, it will buy information about how much you paid for your house or what kind of car you drive. The IRS also could buy lists of restaurants where you have an account, clubs where you're a member or charge accounts you possess.

The solicitation appears to be step one of an IRS plan to build computer profiles of all Americans—starting, of course, with the richer ones. The IRS estimates nonfilers cost the government $3 billion in 1981, and underpayments by individuals and corporations another $81.5 billion. The proposal by IRS to "test" information commercially available follows experiments in which taxmen bought commercial lists of 300,000 truck owners. IRS matched the lists to its own computerized taxpayer rolls, ordered 10,769 taxpayer investigations and collected $3.7 million from 10,680 taxpayers. The IRS also has purchased a medical journal's subscription list to run it through the computer and see if any doctors are forgetting to file.

Deputy Assistant IRS Commissioner Walter E. Bergman has said that examining "lifestyles" of taxpayers is "no big deal," but no ranking IRS official will be interviewed on the matter. IRS spokesmen confirm, however, that plans are afoot to build an IRS database from information compiled by private firms from public sources, such as car registration and real estate transaction lists.

The possibilities are endless. An IRS agent might electronically run the real estate rolls against taxpayer lists, or run through the computer all the names of people who have registered Mercedes-Benzes, Jaguars and Rolls-Royces. Laws now prevent IRS from buying information directly from commercial credit bureaus, but the taxman could buy charge account lists from individual stores. Imagine focusing on mailing lists for Gucci, Tiffany or Georgio's of Beverly Hills. IRS spokesman Rod Young says: "We're looking for individuals whose lifestyles indicate substantial incomes. Generally speaking, we're talking about professional people who are self-employed."

Donald C. Alexander, IRS Commissioner between 1973 and 1977, thinks he can explain what's going on. "There's some mysterious provision in the IRS code that nobody has paid any attention to in the last 50 years that says IRS agents shall, like locusts, go out and canvass the populace," he says. That is section 7601(a) of the Internal Revenue Code, which permits IRS agents to "inquire after and concerning all persons . . . who may be liable to pay any Internal Revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed."

Says Alexander: "That has been carefully forgotten for years because it doesn't make any sense to have a horde of agents marching side by side through a neighborhood inquiring after all persons who may be liable to pay all taxes. Can you envision that? It's just beautiful. I used to think about it at night on Saturdays."

But computers make such a march possible. And here's a twist. The data IRS wants to buy often couldn't be obtained under its subpoena powers, because it fails legal tests of "relevance" and "specificity" to investigations of particular individuals.

Alexander believes such IRS plans are "gropes," bad for the tax system because they will generate mass resentment. "Some of the people living in big houses and paying low taxes might be doing so for good reason," says Alexander. "They might be living off munis [municipal bonds]." He says the IRS already has, and frequently ignores, more useful information: 1099 forms reporting dividends and the interest and records of all cash bank transactions of more than $10,000. Former IRS Commissioner Mortimer Caplin [1961-64] suggest the IRS increase its audits of current returns from 2% to 5%. Using computers to match lifestyles," says Caplin, "is a threat to the whole sense of privacy of the American public."

The inherent privacy problems also bother former IRS Commissioner Jerome Kurtz [1977-80], but he believes occasional use of commercially purchased information by the IRS might help keep people honest. Accurate reporting of income—voluntary compliance—has declined about two-tenths of a percent per year for the last decade. But Krutz says: "It might signal the beginning of a long-term system of putting together comprehensive files on people. The existence of extensive files is subject to abuse, and it bothers me that somebody would be sitting there with an information dossier about my life."

Of course, the Congress is just back from summer recess, and it might have a word or two to say about the IRS effort to play Big Brother. Presumably, the IRS would be building a file on the members of Congress, too.

[From the Boston Globe, Jan. 3, 1984]

THE IRS MAILING LISTS

If the Internal Revenue Service can get its computers cracking, it could be a mistake to be living in the wrong neighborhood.

Take a young Boston schoolteacher making a second-year salary of $15,000 and living in West Roxbury. The IRS computer, in addition to knowing how much income tax she paid last year, is about to be told her *estimated* income, an estimate made solely on the basis of where she lives.

The IRS has bought—for a test run—a computerized list of the *estimated* incomes of some two million Americans. Such lists are created by taking names and addresses from telephone directories and sorting them by census tracts. The schoolteacher, for instance, lives in census tract 110-601 (known to others as St. Theresa's parish, near the Brookline line). The median household income there is $23,227.

The conclusion, to a suspicious IRS agent is obvious. The schoolteacher could be underreporting her income and should be investigated.

Already, the direct-mail marketing industry is concerned because it fears that people will want their names removed from mailing lists if they begin to think that subscribing to a magazine or a mail-order catalogue will win them an IRS investigation.

That industry makes money by creating lists and selling them to magazine publishers and mail-order houses. Since these firms are interested in good prospects—that is, someone who can afford to subscribe to the magazine or to buy something from the catalogue—they target their mailings to higher-income neighborhoods. They will match good census tracts (like 110-601) with the zipcode (02232) and out will go an invitation to subscribe to the New Yorker or a catalogue from Talbot's.

Officials of the nation's largest marketing services told the New York Times that the IRS purchase of computerized lists violated the industry's code of ethics, which states that lists can only be rented for marketing purposes. This provision parallels a principle in the Federal Privacy Act: information collected by an agency for one purpose cannot be used for another purpose without informing the person who provided the information.

That principle protects an individual against the ability of the federal government to computerize information about its citizens. According to some estimates, the government, at its various levels, now holds more than 3.5 billion records on Americans in some 7000 data banks.

As long as these various Social Security numbers, IRS returns, police records, health and hospital records and drivers licenses are kept separate, there is some assurance they will be used only for the legitimate and beneficial purpose for which they were collected. Put them together, as the right computer could do, and it is possible to amass an electronic dossier on virtually every American.

The IRS acquisition of marketing lists punches a hole in the protective barrier against electronic surveillance. The IRS should return the lists and destroy the computer tapes made from them—or be forced to do so by Congress.

[From the Christian Science Monitor, Jan. 3, 1984]

IRS AND YOUR MAILBOX

Have you received your federal tax forms? For many households around the United States, the new forms have already arrived in the mail.

We mention this because the mail boxes of America are involved in another way in tax matters this year, besides receiving the latest IRS forms. That is, the IRS is now starting to use private mail-order lists in order to track down tax cheaters.

Here's how it works: The IRS has acquired computerized printouts of some 2 million households in the US. The lists come from the direct-mail marketing community—firms that put together marketing lists of households based on income and other financial data that can be used by mail-order firms to target sales programs. The lists were acquired despite the refusal of three major firms in the direct-marketing field to cooperate with the IRS, as well as over the objections of the Direct Marketing Association, the industry's primary trade group.

The IRS will match the direct-mail marketing data containing income estimates against its own computer lists to determine whether households may be underreporting income or not paying taxes.

As we have said earlier on these pages, the IRS is more than justified in seeking to identify tax cheats—persons and firms that either deliberately underpay taxes, or fail to pay them at all. The underground economy—where transactions are made in cash or on a barter basis—is estimated at between $90 billion and $100 billion, half the federal budget deficit.

There is a larger principle, however, that should not be overlooked. The public will support the IRS in going after tax dodgers if it perceives that IRS methods are aboveboard and fair. If the public begins to feel threatened by IRS investigation procedures, support could quickly evaporate.

There are a number of problems in using direct-mail listings. The Federal Privacy Act sets out the rule that information collected for one purpose cannot be used for another purpose without informing the individuals involved of the change in use. And what about the responsibility of private marketing firms? Why should they be information agencies for the government?

A final element is worrisome. Information on mailing lists is often wrong. Should such often-erroneous lists be used to initiate possible federal income tax inquiries or audits?

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